COURT OF APPEALS
DECISION
DATED AND RELEASED

July 15, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 97-0064-CR &
97-0882-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GARY BRYANT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN F. FOLEY and MICHAEL P. SULLIVAN, Judges. *Affirmed and cause remanded for entry of a corrected judgment.*

FINE, J. Gary Bryant appeals from a judgment convicting him, on his "no contest" plea, of violating a domestic-abuse injunction, *see* § 813.125(4) & (7), STATS., as a habitual offender, *see* § 939.62, STATS., and from the trial court's

order denying his motion for postconviction relief seeking to withdraw his plea.[1] We affirm.

I.

This case was plea bargained. In May of 1996, Bryant, who had been in custody as the result of an inability to post bail, pled "no contest" in exchange for the State's agreement to recommend a "time served" disposition. At the plea hearing and under oath, Bryant testified that he was entering his plea freely and not in response to any threats or promises. A guilty plea questionnaire that Bryant signed indicated that he understood "that if this crime was committed while I was on probation/parole, my guilty plea could be grounds for revocation of my probation/parole." The trial court accepted Bryant's plea and, in conformity with the plea bargain, sentenced him to "time served."

When sentenced, Bryant was on probation, with stayed sentences of three consecutive nine-month periods of incarceration for earlier domestic-abuse-injunction violations. Subsequent to his sentence in this case, Bryant's probation was revoked. He sought to withdraw his "no contest" plea in this case, claiming that he would not have entered that plea had he known that his probation was going to be revoked and that he would have to serve the three consecutive nine-month sentences.

The trial court held a hearing on Bryant's postconviction motion. Bryant's probation agent testified that after Bryant was arrested on the charge underlying this appeal he told him that he, the probation agent, "would hold off

[1] The judgment erroneously cites § 813.125(8), STATS. The clerk of circuit court is directed on remand to enter a corrected judgment.

placing a [probation] hold [on Bryant] until I saw what happened with this new case." The agent ultimately placed a probation-hold against Bryant on April 29, 1996, approximately one week before the May 7, 1996, plea hearing. The agent's decision to place the hold was triggered by an inquiry from the district attorney's office. The inquiry prompted the probation agent's supervisor to, as testified to by the agent, direct the agent to "place a hold at that time and investigate the case for revocation." The agent also testified that he told Bryant that he would wait until after the case was finished before deciding whether to revoke Bryant's probation. The agent explained to the trial court that any decision to revoke or not to revoke did not depend upon Bryant's sentence in the case, or whether Bryant was convicted, acquitted, or the case was dismissed. The agent testified that his decision to revoke Bryant's probation was not based solely on Bryant's conviction but also on other matters as well.

Bryant testified at the postconviction hearing that he was not aware of the April 29, 1996, probation hold when he entered his plea on May 7, and that he would not have entered the "no contest" plea had he known that his probation was going to be revoked. The trial court accepted Bryant's representation as true, but denied Bryant's motion nevertheless, ruling that Bryant's "misconception" was "not manifest injustice." The sole issue on this appeal is whether the trial court erred in denying Bryant's motion to withdraw his plea.

II.

"After sentencing, a defendant who seeks to withdraw a guilty or no contest plea carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a 'manifest injustice.'" ***State v. Krieger***, 163 Wis.2d 241, 249, 471 N.W.2d

599, 602 (Ct. App. 1991) (quoted source omitted). Whether to grant or deny a motion to withdraw a plea "is addressed to the sound discretion of the trial court and we will only reverse if the trial court has failed to properly exercise its discretion." ***Id.***, 163 Wis.2d at 250, 471 N.W.2d at 602. A trial court's discretionary determination will be upheld on appeal if it is "consistent with the facts of record and established legal principles." ***Lievrouw v. Roth***, 157 Wis.2d 332, 358–359, 459 N.W.2d 850, 859–860 (Ct. App. 1990).

A defendant who is the beneficiary of a plea bargain is entitled to the benefit of that bargain, unalloyed by prosecutor-inspired circumventions. ***State v. Smith***, 207 Wis.2d 259, 272, 558 N.W.2d 379, 385 (1997) ("'due process requires that the defendant's expectations be fulfilled'") (quoted source omitted). Breach by the State of a plea bargain can be "manifest injustice." ***Birts v. State***, 68 Wis.2d 389, 393, 228 N.W.2d 351, 353 (1975).

Here the plea bargain was that the State would recommend "time served" in exchange for Bryant's plea. The State recommended that disposition, and the trial court went along. Bryant, however, contends that he believed that his probation would not be revoked if he entered his plea. Accepting Bryant's testimony, the trial court labeled that belief a "misconception"—apparently also crediting the probation agent's version of the revocation process.

A defendant's subjective beliefs about the collateral consequences of a plea do not rise to the level of "manifest injustice" entitling a defendant to withdraw his or her plea. ***Id.***, 68 Wis.2d at 397–398, 228 N.W.2d at 356. Significantly, Bryant indicated during the plea colloquy that his plea was not induced by either threats or promises, and acknowledged by signing the plea questionnaire that he understood that his probation was subject to revocation.

The crux of Bryant's claim on this appeal is that the district attorney's office call to the probation department undermined the effect of the plea bargain. The evidence presented at the plea hearing, however, does not support "by clear and convincing evidence" Bryant's view that the call was a deliberate attempt to accomplish *via* a revocation of probation what the plea bargain foreclosed—namely, that Bryant serve more time. The trial court's decision was consistent with the governing legal principles and was well within the ambit of its discretion.

By the Court.—Judgment and order affirmed, and cause remanded for entry of a corrected judgment.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.