

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-1486

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GLEN P. WALKER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Affirmed in part; reversed in part and cause
remanded with directions.*

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Glen P. Walker appeals from an order denying his § 974.06, STATS., motion without a hearing. Because we conclude that the motion's allegations that trial counsel coerced Walker into entering his pleas are

sufficient to warrant a hearing, we reverse and remand for proceedings on this aspect of the § 974.06 motion.

Walker entered *Alford*¹ pleas to three counts of second-degree sexual assault of a child. The convictions were affirmed by this court in *State v. Walker*, No. 93-2848-CR, unpublished slip op. (Wis. Ct. App. Aug. 24, 1994). The appeal was handled by Walker's trial counsel. In February 1997, with the assistance of new counsel, Walker filed a § 974.06, STATS., motion and affidavit seeking plea withdrawal on several grounds: (1) his *Alford* pleas were coerced by trial counsel and therefore were not knowing and voluntary, and (2) trial counsel failed to inform him that even though he was entering *Alford* pleas, he would be required to admit guilt as part of counseling and treatment for purposes of probation or parole. The trial court denied the motion without a hearing because: (1) Walker failed to bring these allegations to the attention of the court at the time he entered his pleas, (2) Walker's retention of trial counsel for his direct appeal undermined his claim that he was coerced into entering his pleas, and (3) the motion made conclusory allegations. Walker appeals.

We first address Walker's argument that he is entitled to a hearing on two claims: (1) that his *Alford* pleas were not voluntary, and (2) that trial counsel was ineffective because Walker did not know that his *Alford* pleas would be treated as guilty pleas and that his refusal to admit guilt would be detrimental to him for purposes of treatment and parole. These arguments were recently rejected in *State ex rel. Warren v. Schwarz*, 219 Wis.2d 616, 579 N.W.2d 698 (1998). In

¹ An *Alford* plea is a conditional guilty plea in which the defendant maintains his or her innocence of the charge while at the same time pleading guilty or no contest to it. See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Warren, the court held that a defendant may not withdraw his or her plea if the defendant was not advised that he or she would be required to admit guilt during sex offender treatment. *See id.* at 639, 579 N.W.2d at 709. *Warren* also disposes of Walker's claim that trial counsel was ineffective for failing to advise him of the consequences of an *Alford* plea for purposes of sex offender treatment.

We turn to Walker's claim that his pleas were coerced by trial counsel. The trial court concluded that Walker's motion was insufficient to require an evidentiary hearing. "If the motion on its face alleges facts which would entitle the defendant to relief, the circuit court has no discretion and must hold an evidentiary hearing. Whether a motion alleges facts which, if true, would entitle a defendant to relief is a question of law that we review de novo." *State v. Bentley*, 201 Wis.2d 303, 310, 548 N.W.2d 50, 53 (1996). If, on the other hand, the motion fails to allege sufficient facts or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to deny the postconviction motion without a hearing. *See id.* at 310-11, 548 N.W.2d at 53.

Applying these standards to Walker's motion, we conclude that the motion alleges facts which, if true, would entitle Walker to relief. Paragraphs seven through nine of Walker's affidavit set forth the circumstances under which he decided to enter *Alford* pleas. Walker alleges that the "overall manner of [trial counsels'] dealings with [him], which included highly charged exchanges that involved raised voices and aggressive instruction as to what [Walker] should do, intimidated [Walker] and ultimately prompted [Walker] to do something he did not want to do and immediately regretted." Walker then recites the substance of the exchanges on July 20, 1992, the date he entered his pleas. We conclude that these factual allegations provide a basis for an evidentiary hearing on Walker's

plea withdrawal motion. The motion specifically alleges conduct of counsel relevant to the claim of coercion. We are hardpressed to suggest other allegations Walker might have made as a factual basis for his plea withdrawal motion.

We disagree with the State that an evidentiary hearing was not warranted because the record conclusively demonstrates that Walker is not entitled to withdraw his *Alford* pleas because he did not bring the alleged coercion to the trial court's attention at the plea hearing. Walker's affidavit alleges a factual basis for his claim that he was coerced into pleading. This arguably affected his ability to present this claim to the trial court at the time he entered his pleas. At the evidentiary hearing to be held in this matter, the trial court may consider the State's argument.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

