COURT OF APPEALS
DECISION
DATED AND FILED

March 31, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3408-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GREGORY WALKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: BONNIE L. GORDON, Judge. *Affirmed.*

SCHUDSON, J.[1] Gregory Walker appeals from a judgment of conviction entered after he pleaded guilty to retail theft, party to a crime. He also appeals from an order denying his motion for postconviction relief. Walker contends that he "should be allowed to withdraw his guilty plea on the ground that

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

a manifest injustice exists because the current procedure that allows a court to exceed a bargained-for state's sentencing recommendation without warning to the defendant and the granting of an opportunity to withdraw his plea is fundamentally unfair." This court rejects his argument and affirms.

On July 14, 1997, pursuant to a plea agreement, Walker entered his guilty plea to one count of retail theft, party to a crime, for the July 7, 1997 theft of a pair of shoes from a store on West Silver Spring Drive in the City of Milwaukee. Under the terms of the agreement, the State recommended a sentence of between thirty and sixty days in the House of Correction. The trial court sentenced Walker to five months in the House of Correction, with Huber privileges, consecutive to any other sentence.

On October 23, 1997, Walker filed his postconviction motion, alleging that: (1) he did not understand that the trial court did not have to follow the State's recommendation; (2) he did not remember his trial attorney advising him of this fact; and (3) the current practice of allowing trial courts to exceed the bargained-for recommendation without warning and an opportunity to withdraw the plea is fundamentally unfair. The trial court denied the motion without a hearing, concluding that Walker's first two arguments were self-serving and conclusory and that his third had already been rejected by the Wisconsin Supreme Court in ***State v. Betts***, 129 Wis.2d 1, 383 N.W.2d 876 (1986).

Walker's sole argument on appeal is that the current procedure that allows a trial court to exceed the bargained-for state's sentence recommendation without warning the defendant and granting him the opportunity to withdraw his plea is fundamentally unfair. He contends that this court should adopt a rule requiring the trial court to inform the defendant if it intends to impose a greater

sentence than recommended pursuant to a plea agreement. This court cannot adopt such a rule. *See* ***Betts***, 129 Wis.2d 1, 383 N.W.2d 876 (1986) (rejecting a petition for a rule change which would have required a trial court to disclose its disapproval of a plea agreement prior to sentencing); *see also* ***Cook v. Cook***, 208 Wis.2d 166, 190, 560 N.W.2d 246, 256 (1997); ***State v. Schumacher***, 144 Wis.2d 388, 407, 424 N.W.2d 672, 679 (1988) (court of appeals is an error-correcting court; it cannot overrule or modify decisions of the supreme court). Accordingly, this court affirms the judgment and order.

By the Court.—Judgment and order affirmed.

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