

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 14, 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. 98-0055-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BERNARD L. BEYER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
SUE E. BISCHHELL, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Bernard Beyer appeals an order denying his motion to withdraw his guilty plea and rejecting his claim of ineffective trial

counsel.¹ He argues that the police engaged in outrageous government conduct by using a child to entrap him in a marijuana sale and illegally disclosed information derived from use of a wireless transmitter. He also argues that his counsel was ineffective for failing to present or pursue these issues and that the trial court should have granted his presentence motion to withdraw his plea. We reject these arguments and affirm the order.

A valid guilty plea waives all nonjurisdictional defects and defenses. *See County of Racine v. Smith*, 122 Wis.2d 431, 434, 362 N.W.2d 439, 441 (Ct. App. 1984). Liberally construing Beyer's brief on appeal, it appears that he attempts to raise a jurisdictional defect by claiming outrageous government conduct and entrapment. Even if there were merit to these arguments, they do not implicate the trial court's jurisdiction. Furthermore, the arguments are without merit. As in all police "sting" operations, the police agent feigned participation in a crime for the purpose of exposing Beyer's criminal activity. This practice does not establish any violation of a "specific constitutional right" or that "the government's conduct [is] so enmeshed in a criminal activity that prosecution of the defendant would be repugnant to the American criminal justice system." *See State v. Gibas*, 184 Wis.2d 355, 360, 516 N.W.2d 785, 787 (Ct. App. 1994). The fact that the police agent was a juvenile has no significance.

Citing *State ex rel. Arnold v. County Court*, 51 Wis.2d 434, 444, 187 N.W.2d 354, 359 (1971), Beyer argues that the State was precluded from disclosing the content of the information drawn from the informant's use of a

¹ Beyer does not appeal the judgment of conviction, although some issues he raises on appeal relate to the initial judgment. In addition, he raises issues on appeal that he does not argue and presents issues that were not raised in the trial court. Nonetheless, in the interest of judicial efficiency, we will address the merits of most of the issues.

wireless transmitter. The law in effect at the time of *Arnold* was modified in 1989 to specifically allow the State to rely on these tapes to prove felony drug charges. *See* § 968.29(3)(b), STATS. Evidence derived from use of the wireless transmitter presents no jurisdictional defect or ground for suppression of evidence.

Entrapment is a nonjurisdictional defense. It was waived by Beyer's entry of a guilty plea. Beyer admitted that he had discussed the possibility of an entrapment defense with his counsel before he entered the plea. The issue was therefore knowingly waived by the plea. In addition, the facts alleged in the complaint constituting the factual basis for the plea establish sufficient predisposition to defeat any entrapment defense.

Beyer argues that his trial counsel was ineffective for failing to pursue a pro se motion to dismiss based upon illegal use of the child informant and outrageous government conduct. He also argues that counsel was ineffective for failing to seek suppression of the evidence arising from use of the wireless transmitter, failing to properly advise Beyer on entrapment and for coercing his guilty plea. Counsel's performance was not deficient for his failure to present nonmeritorious issues. The allegation that counsel coerced a plea is not supported by any facts of record.

Finally, the record discloses no basis for allowing withdrawal of Beyer's plea based upon his claims of blurred vision, confusion, attention deficit disorder and the effects of antidepressant medication. The burden was on Beyer to show a "fair and just reason" for withdrawing his plea. *See State v. Canedy*, 161 Wis.2d 565, 583-84, 469 N.W.2d 163, 170-71 (1991). The trial court found that Beyer's testimony was not credible and that his plea was not affected by these factors. These findings are supported by the transcript of the plea hearing, the

questionnaire executed by Beyer, his previous history including several guilty pleas and several trials, and his testimony in which he admitted that he wanted to withdraw his guilty plea simply because he wished to have a trial to pursue the entrapment defense. The trial court's findings of fact are not clearly erroneous, *see* § 805.17(2), STATS., and remove the factual underpinnings for Beyer's argument.

By the Court.—Order affirmed.

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

