

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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 Wis. Stat. § 808.10 and RULE 809.62.

No. 00-2910-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KEVIN W. MITCHELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Kevin Mitchell appeals a judgment convicting him of failing to report to jail, and an order denying postconviction relief. Mitchell entered a guilty plea to the charge, and then moved to withdraw his plea before sentencing. The trial court denied the motion, sentenced Mitchell to probation,

and entered judgment. Mitchell again moved to withdraw his plea and again the trial court denied relief, resulting in this appeal. We affirm both decisions.

¶2 Mitchell's presentence motion asserted that his plea was unknowing because neither his attorney nor the trial court advised him that it would result in a loss of his right to vote and his right to possess firearms. The trial court concluded that because both were collateral consequences of the plea, Mitchell's ignorance of them did not provide a fair and just reason to withdraw it. Mitchell's postconviction motion raised the same issue, framing it as a question of ineffective assistance of counsel. The trial court concluded that having failed to meet the lesser burden of fair and just reason in his presentence motion, Mitchell could not meet the higher postconviction standard for relief either.

¶3 To withdraw a plea before sentencing, the defendant must show a fair and just reason for doing so. *State v. Shanks*, 152 Wis.2d 284, 288, 448 N.W.2d 264 (Ct. App. 1989). The decision is left to the trial court's discretion, however that discretion is to be exercised liberally toward permitting withdrawal. *Id.* The term "fair and just reason" is not a precise term, but includes a genuine misunderstanding of the consequences of a plea. *Id.* at 290. A defendant not informed of the direct consequences of a plea is entitled to withdraw it. *State v. Madison*, 120 Wis. 2d 150, 159, 353 N.W.2d 835 (Ct. App. 1984).

¶4 Mitchell contends that his forfeiture of the right to possess firearms is a direct consequence of the plea, and therefore entitles him to withdraw it. We disagree. A consequence is direct if it has a definite effect on the defendant's punishment. *State v. Bollig*, 232 Wis. 2d 561, 571, 605 N.W.2d 199 (Ct. App.

2000). However, the purpose of WIS. STAT. § 941.29 (1999-2000)¹ which deprives felons of the right to possess firearms, is to protect public safety, not to punish. *State v. Thiel*, 188 Wis. 2d 695, 707, 524 N.W.2d 641 (1994).

¶5 Our determination that WIS. STAT. § 941.29 imposes a collateral consequence does not end the matter, however, because the Wisconsin Supreme Court has concluded that ignorance of a collateral consequence may nevertheless present a fair and just reason to withdraw a plea. *See Bollig*, 232 Wis. 2d at 578. We must therefore consider whether Mitchell’s ignorance of the particular consequences at issue here satisfy the fair and just standard. We conclude that they do not. Nowhere in the presentencing motion papers or hearing on the issue did Mitchell assert that knowing of the firearm and voting prohibitions would have changed his decision to plead, or even that these rights were of particular significance to him. It is axiomatic that the defendant must show that a “fair and just reason” was something that would have affected the defendant’s decision to plead.

¶6 Because Mitchell’s claim is that he was not informed of only collateral consequences of his plea, he also failed to meet the higher burden of manifest injustice on his postjudgment motion. *See State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 636, 579 N.W.2d 698 (1998).

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

