

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2002

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.

**Appeal No. 01-0988-CR
STATE OF WISCONSIN**

Cir. Ct. No. 97-CF-68

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LARRY L. WHITE EAGLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Juneau County:
JOHN W. BRADY, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Larry White Eagle appeals a judgment convicting him of first-degree sexual assault of a child. He claims the trial court should have allowed him to withdraw his guilty plea prior to the imposition of his sentence. We disagree and affirm.

¶2 In order to withdraw a plea prior to sentencing, a defendant must show by a preponderance of the evidence that he has a fair and just reason for his change of heart, beyond the simple desire to have a trial. *State v. Garcia*, 192 Wis. 2d 845, 861-62, 532 N.W.2d 111 (1995). In considering whether a fair and just reason exists, the trial court may assess the credibility of the proffered explanation for the requested plea withdrawal. *State v. Kivioja*, 225 Wis. 2d 271, 291, 592 N.W.2d 220 (1999). Credibility determinations are not reviewable by this court. *State v. Marty*, 137 Wis. 2d 352, 359, 404 N.W.2d 120 (Ct. App. 1987), *overruled on other grounds by State v. Sanchez*, 201 Wis. 2d 219, 548 N.W.2d 69 (1996).

¶3 Here, White Eagle claimed that his plea was unknowing and involuntary because he was confused at the plea hearing due to medications, and he mistakenly believed entering a guilty plea would result in his transfer to a medical facility and would limit his period of incarceration to four years. White Eagle presented expert psychological testimony that he suffered from a “delusional disorder mixed type with somatic elements, persecutory ideas and grandiosity” which affected his ability to fully understand the consequences of his plea, leading him to fixate on the four-year figure. The trial court flatly rejected the veracity of White Eagle’s proffered explanation for his requested plea withdrawal, calling White Eagle a “bold-faced liar” and noting that the psychological examination had been done a month after the plea hearing and did not directly address the question of whether White Eagle had the capacity to understanding the plea proceedings at that time. The trial court was satisfied that the record of the plea hearing demonstrated White Eagle’s understanding of the plea, and pointed out that White Eagle did not file his motion for plea withdrawal until after he saw the substantial sentence recommendation contained in the

presentence investigation report. Given the trial court's credibility determination, we agree with its assessment that White Eagle failed to establish a fair and just reason for plea withdrawal by a preponderance of the evidence.

By the Court.—Judgment affirmed.

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

