

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2010

A. John Voelker
Acting 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. 2009AP3187-CR

Cir. Ct. No. 2004CF7262

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LARRY EMANUEL LEMONS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN A. FRANKE and DENNIS R. CIMPL, Judges.¹
Affirmed.

Before Curley, P.J., Fine and Kessler, JJ.

¹ The Honorable John A. Franke entered the judgment of conviction and imposed sentence. The Honorable Dennis R. Cimpl entered the order denying Lemons's postconviction motion.

¶1 PER CURIAM. Larry Emanuel Lemons appeals from a judgment convicting him of burglary, as an habitual offender. He also appeals an order denying his postconviction motion to withdraw his plea. He argues that he should be allowed to withdraw his guilty plea because he was under the influence of medication and suffering from a mental illness, rendering him incapable of understanding what was transpiring when he entered his plea. He also contends that his trial counsel told him what to say during the plea colloquy. We affirm.

¶2 “If a defendant moves to withdraw the plea after sentencing, the defendant carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a manifest injustice.” *State v. Thomas*, 2000 WI 13, ¶16, 232 Wis. 2d 714, 726, 605 N.W.2d 836, 842–843 (citation and internal quotation marks omitted). “The higher standard of proof is used after sentencing, because once the guilty plea is finalized, the presumption of innocence no longer exists.” *Id.*, 2000 WI 13, ¶16, 232 Wis. 2d at 726, 605 N.W.2d at 843 (citation omitted). “The ‘manifest injustice’ test requires a defendant to show ‘a serious flaw in the fundamental integrity of the plea.’” *Ibid.* (citation omitted).

¶3 Lemons contends that he was taking medication when he entered his plea and that he has a history of mental health issues, both of which impaired his ability to understand the plea proceedings. Lemons wrote on the plea questionnaire that he had taken Benadryl and Ibuprofen in the twenty-four hours before filling out the plea questionnaire.

¶4 Lemons has not shown how the over-the-counter drugs—an antihistamine and a pain reliever—or his mental health issues impaired his judgment or affected his ability to understand the plea proceedings in any way.

Lemons also does not explain what information he was provided during the plea colloquy that he did not understand and how his lack of understanding affected his decision to enter the plea. Moreover, the circuit court repeatedly asked Lemons during the plea colloquy if he understood the proceedings, if he had any questions, and if there was anything that made it difficult for him to understand what was happening, but Lemons stated over and over that he understood what was transpiring. Therefore, we reject Lemons's argument that his history of mental health issues and the fact that he was taking medication impaired his ability to understand the plea proceedings.

¶5 Lemons next argues that he should be allowed to withdraw his plea because his attorney directed him how to answer questions he did not understand during the plea colloquy. The State characterizes this assertion as vague and unsubstantiated, a characterization with which we agree. Not only is this argument inadequately developed, it finds no support in the Record. The Record establishes that the circuit court directly asked Lemons if anyone had pressured him to plead guilty, and asked him whether he understood that the decision to plead guilty was his choice, not his counsel's choice. The circuit court also asked Lemons whether he had any complaints about his trial counsel, but Lemons said he did not. Therefore, we reject Lemons's claim that he should be allowed to withdraw his plea because his attorney told him how to answer questions he did not understand during the plea colloquy.

By the Court.—Judgment and order affirmed.

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

