

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 28, 2004

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. 02-3135-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CF000069

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DOUGLAS K. UHDE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Adams County: JAMES MILLER, Judge. *Reversed and cause remanded with directions.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Douglas Uhde appeals a judgment convicting him of three felonies and one misdemeanor, including burglary while using a

dangerous weapon.¹ He also appeals an order denying his postconviction motion to withdraw his pleas to the charges. On appeal, Uhde contends that he did not enter a knowing and voluntary plea, for two reasons: (1) the trial court failed to personally inform him that, under truth-in-sentencing, he would have to serve the entire period of initial confinement without opportunity for good time or parole, and (2) during the plea colloquy, the trial court misstated the elements of the burglary charge. The State concedes error on the latter issue. We therefore reverse and remand with directions to grant Uhde's plea withdrawal motion.

¶2 When we first considered Uhde's appeal, the State disputed both of Uhde's plea withdrawal arguments. We issued a decision reversing and remanding for a rehearing on Uhde's plea withdrawal motion. After further consideration, we withdrew our opinion and certified the appeal to the supreme court on the question whether a circuit court must inform a defendant, during the plea colloquy, that initial confinement under truth-in-sentencing will not be reduced by good time or parole. The supreme court granted certification. After the supreme court accepted the case, the State submitted a brief reversing its position on Uhde's burglary misstatement claim. The State conceded before the supreme court that Uhde is entitled to plea withdrawal based on the trial court's misstatement of the elements of burglary. Uhde then asked the supreme court to summarily dispose of the appeal or vacate the certification. On September 16, 2004, the supreme court granted Uhde's motion for summary disposition and

¹ In an apparent clerical error, the judgment omits the weapon enhancer from the burglary count. The prosecutor charged Uhde with burglary while using a dangerous weapon, and that is the charge the trial court explained to Uhde at the plea hearing before accepting his plea to it. Nothing of record indicates any subsequent amendment of the charge. The parties both agree that the conviction includes the enhancer, notwithstanding the judgment's omission.

remanded the case to this court for further proceedings “in light of the State’s concession in its brief ... that defendant-appellant is entitled to plea withdrawal.” Although our review of the State’s supreme court brief does not, in our view, reveal a clear explanation as to why the State is now confessing error, we conclude that the supreme court must have deemed the concession appropriate or that court would not have vacated the certification.

¶3 After the case returned to this court, the State asked that we accept its supreme court brief as its brief-in-chief before this court. Uhde filed a motion for clarification and moved for summary disposition. The State then filed a letter stating that it takes no position on Uhde’s motion for summary disposition. We grant the State’s motion and inform the parties that we have considered the concession in the State’s supreme court brief and the State’s decision before this court not to oppose Uhde’s motion for summary disposition.

¶4 We also note that it is apparent that the State’s plea withdrawal concession includes the assumption that all pleas entered by Uhde are to be withdrawn. We understand Uhde to be seeking precisely that relief. *See State v. Robinson*, 2002 WI 9, ¶31, 249 Wis. 2d 553, 638 N.W.2d 564 (where defendant successfully challenges plea to one of two counts, “ordinarily the remedy is to reverse the convictions and sentences, vacate the plea agreement, and reinstate the original information”).

¶5 Consequently, we reverse and remand. On remand, we direct the trial court to grant Uhde’s plea withdrawal motion and vacate his convictions. Because Uhde’s original pleas will be withdrawn, we have no further reason to consider Uhde’s truth-in-sentencing claim.

By the Court.—Judgment and order reversed and cause remanded with directions.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

