

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 26, 1996

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2572-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SHAMSELDIN ALI ABDELWARRESS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS COOPER, Judge. *Affirmed.*

FINE, J. Shamseldin Ali Abdelwarress appeals from a judgment convicting him, on his guilty plea, of battery. See § 940.19, STATS. He claims that the trial court erred in not permitting him to withdraw that plea prior to sentencing. We affirm.

Whether a defendant may withdraw a guilty plea is vested in the trial court's discretion. *State v. Canedy*, 161 Wis.2d 565, 579, 469 N.W.2d 163, 169 (1991). "A discretionary determination, to be sustained, must

demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law." *Id.*, 161 Wis.2d at 579-580, 469 N.W.2d at 169 (citation omitted). Prior to sentencing, as here, "a defendant *should* be allowed to withdraw a guilty plea for any fair and just reason, unless the prosecution would be substantially prejudiced." *Id.*, 161 Wis.2d at 582, 469 N.W.2d at 170 (emphasis in original). A "fair and just reason" requires that the defendant demonstrate, by a preponderance of the evidence, that there is an "adequate reason for the defendant's change of heart" other than "the desire to have a trial." *Id.*, 161 Wis.2d at 583-584, 469 N.W.2d at 170-171.

Abdelwarress submitted an affidavit in support of his motion to withdraw his guilty plea. In that affidavit, he asserted that: (1) he was a native of Egypt and that English was his second language; (2) he never discussed with his trial counsel the entering of a guilty plea; (3) he always maintained his innocence; (4) he never discussed with his trial counsel the consequences of entering a guilty plea; (5) he "was fearful" that his trial lawyer, then in the middle of a trial defending Abdelwarress on another criminal charge, would be angry if Abdelwarress did not plead guilty to the battery charge; (6) he needed additional time to decide whether to plead guilty or not; and (7) he was "confused regarding the elements [of battery] and specifically, the legal requirements of 'intent' to commit a battery." The trial court held a hearing on Abdelwarress's motion, but Abdelwarress declined to testify.

In denying Abdelwarress's motion to withdraw his guilty plea, the trial court applied the standards enunciated in *Canedy*. The trial court also recounted that Abdelwarress was not rushed in his plea. Indeed, although Abdelwarress entered the guilty plea in the middle of the trial on the other charge (endangering safety by use of a dangerous weapon), the transcript of the guilty-plea hearing and the written guilty plea questionnaire executed by Abdelwarress support the trial court's finding that the plea was voluntary, and that the assertions in Abdelwarress's affidavit were not true.¹ Further,

¹ Thus, the transcript of the plea hearing reveals that the trial court appropriately and patiently indicated that it would refuse to accept Abdelwarress's plea if Abdelwarress did not intend to injure the alleged victim:

THE COURT: Mr. Abdelwarress, are you pleading guilty because you're admitting on October 10th of 1994 at 2514 North Kramer in the City of Milwaukee you did cause bodily harm to Darlene Stark with an act done to -- with the intent to cause bodily harm to

(..continued)

Darlene Stark, and that was done without the consent of Darlene Stark contrary to Wisconsin Statutes?

I am asking, are you pleading guilty because you did what they said you did?

THE DEFENDANT: Well --

[DEFENSE ATTORNEY]: Did you hit her with an ice scraper?

THE DEFENDANT: But there was no intent to bodily harm. I was asleep and I don't have total recollection.

THE COURT: If you did not intend to batter her, I cannot accept the plea.

THE DEFENDANT: No, I plead guilty.

THE COURT: Pardon me?

THE DEFENDANT: I am pleading guilty.

THE COURT: Did you intend to hit her with that?

THE DEFENDANT: Yes.

THE COURT: It's okay either way. I mean we can try the case. We're right in the middle of it.

So you intended to hit her with the ice scraper?

THE DEFENDANT: Yes.

[PROSECUTOR]: I'm sorry, I didn't hear his answer.

THE COURT: Yes. Is that what the response was?

THE DEFENDANT: Yes.

THE COURT: I am satisfied, based upon that, there is sufficient grounds to support a finding of guilt.

The State stipulating to factual basis in the complaint, [prosecutor]?

[PROSECUTOR]: Yes, Judge.

Abdelwarress testified during the trial on the other charge that he came from Egypt on a scholarship, that he planned on attending law school in the fall of that year, and that he had a “post-graduate diploma in psychology.”

The trial court's determination that Abdelwarress was attempting to “manipulate the court” is supported by the record. Accordingly, the trial court's conclusion that Abdelwarress did not satisfy the first prong of the *Canedy* test is supported by the record.² The trial court's denial of Abdelwarress's motion to withdraw his guilty plea was well within its discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

(..continued)

THE COURT: I will find the defendant guilty of the charge of battery.

² We do not address the second prong of the *Canedy* test. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).