

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 16, 1997

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. 95-3485-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PHILLIP K. ADAMS,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Dane County: RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Phillip Adams appeals from a judgment convicting him of possession of cocaine with intent to deliver and from an order denying his motion to withdraw his no contest plea. The issues are: (1) whether the trial court properly exercised its discretion in denying Adams' motion to withdraw his no contest plea; and (2) whether the trial court properly

denied Adams' request for a postconviction hearing to determine whether he had received ineffective assistance of trial counsel. We affirm.

Pursuant to a plea agreement, Adams pleaded no contest to possession of cocaine with intent to deliver. The trial court accepted Adams' plea and convicted him based on its colloquy with Adams and on Adams' acknowledgments in a Plea Questionnaire and Waiver of Rights form. The trial court sentenced Adams to ten years' imprisonment, the presumptive minimum for the crime.

Adams first argues he should have been allowed to withdraw his no contest plea after sentencing. Adams contends that a manifest injustice has occurred because the trial court did not establish an adequate factual basis for conviction before accepting his plea and he "has consistently denied that he committed the crime."

A guilty or no contest plea may be withdrawn after sentencing only when it is necessary to correct a manifest injustice. *White v. State*, 85 Wis.2d 485, 491, 271 N.W.2d 97, 100 (1978). We review the trial court's decision denying a motion to withdraw a guilty or no contest plea for a misuse of discretion. *Id.*

The trial court did not misuse its discretion in denying Adams' motion to withdraw his plea because the entire record provided a factual basis for the plea, even though the plea colloquy was, in and of itself, insufficient. In the plea questionnaire, Adams acknowledged that he understood that, if he pleaded no contest, he would be found guilty based on the facts in the complaint. During the hearing in which Adams waived his right to a preliminary examination, he stated that he had reviewed the complaint. The complaint alleged that the police executed a search warrant for Adams' home and found cocaine. The complaint further alleged that Adams told the police that he had concealed the cocaine behind the refrigerator and in a vacuum cleaner and that a friend was paying him to store the cocaine. Because Adams' plea was the result of plea negotiations, the trial court was not required to go the same length to determine whether the facts would sustain the charge as it would when there was no negotiated plea. See *Broadie v. State*, 68 Wis.2d 420,

423-24, 228 N.W.2d 687, 689 (1975). The trial court did not misuse its discretion in concluding that there was a factual basis for the plea.

Adams next argues that he should be allowed to withdraw his plea because he received ineffective assistance of trial counsel. He contends that his trial attorney was under partial or complete disability when she represented him. In support of his claim, Adams points to the fact that his trial counsel did not recall at sentencing, as she acknowledged by affidavit, that Adams had explained to her that the \$600 in cash found on his person during the execution of the warrant came from general assistance and AFDC and was going to be used to pay the rent. Adams argues that his attorney was thus unable to rebut the prosecutor's argument that Adams was unable to explain the source of the \$600, implying that the funds had come from drug transactions.

To prove a claim of ineffective assistance of trial counsel, a defendant must establish that counsel's performance was deficient and that the deficient performance was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Even if everything alleged in Adams' affidavit about his trial counsel's performance is true, Adams was not entitled to a hearing because he has not alleged facts sufficient to constitute ineffective assistance of counsel. Adams alleges that *at sentencing*, his trial counsel failed to explain the source of funds found on him during execution of the search warrant. There is no nexus between counsel's failure to mention the source of the funds *at sentencing* and Adams' decision to enter his no contest plea. The trial court stated in its decision denying the postconviction motion that counsel's failure to mention the source of the funds did not affect the sentence it imposed, presumably because it imposed the presumptive minimum sentence. The trial court did not erroneously exercise its discretion in denying Adams' claim of ineffective assistance of trial counsel without holding a hearing because Adams has not shown that he was prejudiced by counsel's conduct at sentencing.

By the Court.— Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.