COURT OF APPEALS
DECISION
DATED AND RELEASED

October 23, 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

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No. 96-0655-CR-NM

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CURTIS L. GOLSTON,

Defendant-Appellant.

APPEAL from judgments and an order of the circuit court for Kenosha County: FREDERICK P. KESSLER, Reserve Judge, and BRUCE E. SCHROEDER, Judge. *Affirmed*.

BROWN, J. Curtis L. Golston appeals his misdemeanor convictions for two counts of violating domestic abuse injunctions, as a repeater. On one count, a jury found Golston guilty of having sent the victim a letter from prison. On the second count, Golston pled no contest to having driven a state-owned correctional center van slowly past the victim's home. Golston's counsel has filed a no merit report under ***Anders v. California***, 386 U.S. 738 (1967). Golston received a copy of the report and has filed a response. Counsel's no merit report raises three basic arguments: (1) trial counsel was ineffective in several respects; (2) the trial court proceedings contained defects concerning Golston's repeater status, the statute of limitations, intrastate

detainer procedures, speedy trial rights and new evidence; and (3) Golston has new exculpatory evidence.

In his pro se response, Golston concentrates on three issues: (1) the proceedings violated the intrastate detainer statutes; (2) the statute of limitations required the prosecution to file the complaint before the injunction's expiration; and (3) new evidence demonstrates that a prison social worker authorized Golston to send the victim the letter. Upon review of the record, this court is satisfied that the no merit report properly analyzes the issues it raises, and this court will not discuss them further. This court also concludes that Golston's pro se issues have no arguable merit. Accordingly, this court adopts the no merit report, affirms the convictions, and discharges Golston's appellate counsel of his obligation to represent Golston further in this appeal.

First, Golston's no contest plea to the drive-by charge waived all pre-plea defects on that charge except jurisdictional defects, *see* ***State v. Bangert***, 131 Wis.2d 246, 293, 389 N.W.2d 12, 34 (1986), including the problems with the intrastate detainer statute, the statute of limitations, and the adequacy of trial counsel on those matters. *See* ***Smith v. Estelle***, 711 F.2d 677, 682 (5th Cir. 1983), *cert. denied*, ***Smith v. McKaskle***, 466 U.S. 906 (1984). Golston has alleged nothing that transpired before the plea amounting to a jurisdictional defect. As a result, Golston's no contest plea operated to cure every trial court defect he has raised in his response. Golston's no contest plea constituted an exchange of uncertainty for a degree of certainty in terms of the proceedings' outcome. As part of that exchange, he forfeited his right to make further challenges to pre-plea proceedings.

Moreover, Golston's plea reversed the presumption of innocence, ***State v. Koerner***, 32 Wis.2d 60, 67, 145 N.W.2d 157, 160-61 (1966), and he has raised no issue that merits a reexamination of his guilt. Trial and appellate courts must ignore every defect in pleading, procedure and the proceedings that does not affect the substantial rights of the parties. ***State v. Weber***, 174 Wis.2d 98, 109, 496 N.W.2d 762, 767 (Ct. App. 1993). The same standard applies to actions by defense counsel. Such actions cause no prejudice unless they affect substantial rights. *See* ***Herman v. Butterworth***, 929 F.2d 623, 628 (11th Cir. 1991). Here, Golston raises procedural defects or substantive issues that do not bear upon substantial rights or substantially undermine his plea's fundamental guilt-

evincing factual basis. Litigants may not use ineffective counsel claims to prolong substanceless proceedings on the basis of such issues.

Likewise, Golston has not shown that the issues he now raises contributed to his decision to plead no contest. Litigants may withdraw pleas on a postjudgment basis if they were not intelligent and voluntary. ***State v. James***, 176 Wis.2d 230, 236-37, 500 N.W.2d 345, 348 (Ct. App. 1993). This rule rests on the premise that whatever misapprehensions plea makers may have had must concern their substantial rights. The misunderstanding must have advanced a manifest injustice. ***State v. Woods***, 173 Wis.2d 129, 140, 496 N.W.2d 144, 149 (Ct. App. 1992). Otherwise, plea makers could withdraw their pleas on the basis of immaterial misunderstandings. Here, Golston raises procedural defects that have not affected substantial rights or substantive issues that have not undermined the plea's fundamental factual basis. In sum, he has not shown a manifestly unjust misunderstanding.

Finally, Golston's issues have no arguable merit regarding the drive-by or letter-writing charges. First, the prosecution filed the complaint the day after Golston's release from prison. Golston's release from prison took his prosecution outside the dictates of the intrastate detainer statute, § 971.11, STATS. This provision creates some special procedures for prosecutions of prisoners. The statute places no control, however, on prosecutions of former prisoners after their release. Second, the statute of limitations did not require the prosecution to file charges before the domestic abuse injunction's expiration. The misdemeanor limitations period ran from the date of the offenses. Section 939.74(1), STATS. The injunction set the period when Golston's actions risked criminal liability, not the period when actions risked prosecution.

Third, Golston's letter-writing conviction survives his postjudgment claim that a prison social worker authorized him to send the victim the letter. According to Golston, the social worker's authorization effectively nullified the requisite mens rea criminal intent Golston otherwise would have had. Golston's failure to raise these critical substantive facts at trial, despite testifying himself, circumstantially proves their nonexistence, *see* ***Booth v. Frankenstein***, 209 Wis. 362, 370, 245 N.W. 191, 193-94 (1932), thereby making them inherently improbable. *See* ***United States v. Ramos-Rascon***, 8 F.3d 704, 708 n.3 (9th Cir. 1993); ***Lazarus v. American Motors Corp.***, 21 Wis.2d 76, 84, 123 N.W.2d 548, 552 (1963). Regardless, Golston should have known that social

workers have no power to modify court issued injunctions. As a result, Golston could not use a social worker's station-exceeding authorization to nullify criminal intent. Accordingly, Golston's counsel is discharged.

By the Court.—Judgments and order affirmed.