

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 11, 2011

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 Nos. 2009AP2865-CR
2009AP2866-CR**

**Cir. Ct. Nos. 2007CF759
2007CF1395**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALEX D. KEETON,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Alex D. Keeton appeals judgments convicting him of second-degree reckless homicide, with use of a dangerous weapon, and solicitation to commit first-degree intentional homicide. He also appeals an order denying his motion for postconviction relief. Keeton contends that he should be

allowed to withdraw his guilty pleas because he was denied phone access while incarcerated prior to his plea, which prevented him from learning that his family had located a witness who would exonerate him. 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 The relevant facts are not disputed. Keeton was incarcerated in segregation without access to a telephone prior to entering his guilty pleas. Keeton’s phone privileges were restricted by the sheriff. The prosecutor sent a letter to the sheriff asking that Keeton’s phone privileges be restricted because Keeton had been recorded on the telephone soliciting someone to murder one of the witnesses against him.

¶4 Keeton contends that he should be allowed to withdraw his guilty pleas because his restricted phone access prevented him from speaking to his family before he pled guilty. He contends that his family told him after he entered his pleas that they had located a witness who would testify that Keeton had a different type of gun in his hand than the gun that the prosecutor claimed killed the

victim. Keeton also contends that the witness would have said that Keeton shot his gun up into the air, not toward the victim.

¶5 Keeton's argument is flawed for several reasons. First, Keeton has not provided us with sufficient information to support his claim. He has not told us the name of the witness who would allegedly exonerate him, nor has he told us which of his family members talked to the witness. Second, Keeton has not explained why his restricted phone privileges prevented his family from telling him about the existence of this witness before he entered his plea. Keeton was allowed personal visits, his mail privileges were not restricted, and Keeton's family could have told him through his attorney, who met with Keeton during this period of time. Since Keeton's family could have provided him with this information in several ways, regardless of his phone privilege restrictions, Keeton has failed to show, by clear and convincing evidence, that there was "a serious flaw in the fundamental integrity of the plea." *See Thomas*, 2000 WI 13, ¶16, 232 Wis. 2d at 726, 605 N.W.2d at 843 (citation omitted). Therefore, we reject his argument that he should be allowed to withdraw his plea.

¶6 Keeton next contends that the prosecutor acted improperly when he asked the sheriff to restrict Keeton's phone privileges because the prosecutor did not notify Keeton's attorney that he had done so. Keeton has not shown how this alleged lack of notice adversely impacted him. Certainly, Keeton himself knew that his phone privileges had been restricted, regardless of the reason why they were restricted. The prosecutor's requested restrictions were reasonable; Keeton had been using the phone to attempt to have one of the witnesses murdered. Under these circumstances, Keeton's argument that the prosecutor acted improperly is unavailing.

By the Court.—Judgments and order affirmed.

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

