

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 2017

Diane M. Fremgen
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. 2014AP900

Cir. Ct. No. 2007CF6047

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AHYOH E. COWANS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Brennan, P.J., Brash and Dugan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Ahyoh E. Cowans appeals an order denying his collateral attack on a judgment convicting him of felony murder. Cowans argues that he should be allowed to withdraw his guilty plea because he was coerced into entering it by co-defendant Aaron Deal. We affirm.

¶2 As a preliminary matter, we note that Cowans argues that his current claim should survive the procedural bar of *Escalona-Naranjo*, which provides that a defendant must raise all grounds regarding postconviction relief during the direct appeal process, and a defendant is barred from later raising a claim unless the defendant provides a sufficient reason for failing to previously raise the claim. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994); *see also* WIS. STAT. § 974.06(4) (2015-16).¹ For expediency's sake, we have decided to address Cowans' argument on the merits regardless of whether a procedural bar might apply to this action.

¶3 Cowans argues that he should be allowed to withdraw his guilty plea because Deal coerced him into entering the plea. A defendant seeking permission to withdraw a plea after sentencing bears the burden of showing by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice. *State v. Trochinski*, 2002 WI 56, ¶15, 253 Wis. 2d 38, 644 N.W.2d 891. A manifest injustice occurs when a plea is not knowingly, intelligently and voluntarily entered. *Id.* A plea is not voluntary when a defendant enters the plea because he has been coerced. *See State v. Basley*, 2006 WI App 253, ¶9, 298 Wis. 2d 232, 726 N.W.2d 671. To be entitled to an evidentiary hearing on a plea

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

withdrawal claim, a defendant is required to allege facts that, if true, would entitle him to relief. See *State v. Howell*, 2007 WI 75, ¶74, 301 Wis. 2d 350, 734 N.W.2d 48.

¶4 A decision is coerced under the law “[w]hen the defendant is not given a fair or reasonable alternative [from which] to choose.” *Rahhal v. State*, 52 Wis. 2d 144, 152, 187 N.W.2d 800 (1971). Coercion is “a force which compels the human mind to act” in a certain manner. *Id.* at 151. In contrast, a motivation that induces a defendant to act is not coercion. *Id.* For example, in a case where a defendant moved motion to withdraw his plea as involuntary on the ground that pending charges constituted a “threat” compelling him to enter the plea, we explained that “[u]nless the threats coerce or induce the plea to an extent that deprives the accused of understanding and free will, they provide no basis for [plea] withdrawal.” *Verser v. State*, 85 Wis. 2d 319, 329, 270 N.W.2d 241 (Ct. App. 1978).

¶5 To support his claim that he was coerced into entering the plea in 2008, Cowans contends that, before he was arrested, an unnamed third party told him that Deal’s brother threatened to kill him and his family if he told the police about Deal’s involvement in the crimes.² Cowans also submits two affidavits. First, his mother avers that she received an anonymous threatening letter in 2008 that was read to her by her daughter because she is visually impaired. The letter said: “your son better take the plea or else.” Second, Cowans’ sister avers that she read the letter to her mother and that the letter had no sender’s name or address.

² It is unclear whether from Cowans’ motion whether the unnamed person relayed this threat one time or two times.

¶6 Assuming the facts that Cowans has alleged are true, he has not met his burden of showing by clear and convincing evidence that he was coerced into entering his plea. Cowans cannot credibly argue that he was coerced into entering the plea *due to a threat before he was arrested* when he disregarded that threat by talking to the police about Deal’s involvement *after his arrest* and long before he entered his guilty plea. As for the menacing letter to Cowans’ mother, the letter did not contain an explicit threat of violence or killing, and did not say that Cowans’ family was in immediate physical danger. A single anonymous and threatening letter does not provide a sufficient foundation upon which to build an argument that Cowans was deprived of “free will” regarding his decision to enter a plea. *See id.* Even if Cowans was motivated by a desire to protect his family and prevent them from being harassed, Cowans must show that he was legally coerced—that is, that the plea was involuntary because he had no choice but to enter it—in order to be entitled to plea withdrawal. He has not done so. We therefore conclude that the circuit court properly denied Cowans’ motion to withdraw his plea without a hearing because Cowans’ allegations, assuming they are true, do not show that he had no choice but to enter the plea.

By the Court.—Order affirmed.

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

