

SUPREME COURT OF WISCONSIN

State v. Jenkins, 2007 WI 96

736 N.W.2d 24 (2007) · No. 2005AP302-CR · Decided July 12, 2007

SUMMARY

The Supreme Court of Wisconsin reviewed the denial of Barry M. Jenkins's presentence motion to withdraw his guilty plea. The court held that the circuit court did not erroneously exercise its discretion because the record supported its determination that Jenkins understood the plea's consequences and had no guaranteed opportunity to cooperate with law enforcement. The court reversed the court of appeals.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	David T. Prosser, J.; Shirley S. Abrahamson, Chief Justice; Louis B. Butler, Jr., J.
JURISDICTION	Wisconsin
DECIDED	July 12, 2007
DOCKET	2005AP302-CR
DISPOSITION	reversed
PROCEDURAL POSTURE	The State petitioned the Wisconsin Supreme Court for review of a published court of appeals decision reversing the circuit court's denial of Jenkins's presentence motion to withdraw his guilty plea.
STANDARD OF REVIEW	A circuit court's decision on a presentence motion to withdraw a guilty plea is reviewed under the erroneous exercise of discretion standard. The reviewing court defers to the circuit court's historical and evidentiary findings, including credibility determinations, unless clearly erroneous; when no factual or credibility disputes exist, whether a fair and just reason exists is reviewed de novo. If the circuit court inadequately explains its decision, the appellate court independently reviews the record to determine whether the decision can be sustained under the correct law.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential.
PARTIES	Barry M. Jenkins v. State of Wisconsin

TOPICS

plea bargaining

criminal procedure

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether Jenkins established a fair and just reason to withdraw his guilty plea before sentencing based on an alleged misunderstanding that he would be guaranteed an opportunity to cooperate with law enforcement and potentially receive sentencing benefits.
2. What standard governs appellate review of a circuit court's denial of a presentence motion to withdraw a guilty plea.
3. Whether the circuit court erroneously exercised its discretion by focusing on whether the cooperation arrangement was part of the plea agreement rather than on whether Jenkins misunderstood the consequences of his plea.

HOLDINGS

1. Before sentencing, a defendant may withdraw a guilty plea for any fair and just reason unless the prosecution would be substantially prejudiced, but presentence withdrawal is not an absolute right and remains within the circuit court's discretion.
2. The denial of a presentence motion to withdraw a guilty plea is reviewed for an erroneous exercise of discretion; the reviewing court must uphold the decision if the circuit court examined the relevant facts, applied the proper law, and reached a rational conclusion supported by the record.
3. Jenkins did not establish a fair and just reason to withdraw his plea because the record supported the circuit court's finding that he understood the plea agreement and merely had an unfulfilled hope of obtaining additional sentencing consideration through cooperation with law enforcement.
4. A defendant need not assert innocence to establish a fair and just reason for presentence plea withdrawal, although an assertion of innocence may bear on the credibility of an asserted misunderstanding, confusion, or coercion.

KEY QUOTATIONS

“the defendant should be allowed to withdraw a guilty plea for any fair and just reason, unless the prosecution would be substantially prejudiced.” (¶ 28)

“this court need find to sustain a discretionary act is that the circuit court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” (¶ 30)

“Withdrawal of a guilty plea before sentencing is not an absolute right.” (¶ 32)

"If 'the circuit court does not believe the defendant's asserted reasons for withdrawal of the plea, there is no fair and just reason to allow withdrawal of the plea.'" (¶ 34)

FACTUAL BACKGROUND

Jenkins was charged with selling heroin after undercover officers purchased heroin from him. He entered a guilty plea under an agreement requiring the State to recommend 24 months of initial confinement, 24 months of extended supervision, and a fine, while counsel separately discussed the possibility that Jenkins might cooperate with law enforcement and receive sentencing credit if his information proved useful. No cooperation provision was included in the plea agreement, and the plea colloquy established that no one had promised Jenkins anything beyond the State's sentencing recommendation. Before sentencing, law enforcement did not arrange the anticipated cooperation, and Jenkins moved to withdraw his plea.

PROCEDURAL HISTORY

Jenkins was charged with delivery of three grams or less of heroin, entered a guilty plea pursuant to an agreement concerning the State's sentencing recommendation, and moved to withdraw the plea before sentencing based on his expectation that he would have an opportunity to cooperate with law enforcement and receive sentencing consideration. The Milwaukee County Circuit Court denied the motion, imposed sentence, and denied postconviction relief. The Wisconsin Court of Appeals reversed, concluding that Jenkins had a genuine misunderstanding supporting plea withdrawal. The Wisconsin Supreme Court reversed the court of appeals and reinstated the circuit court's denial.

DISPOSITION

reversed

CASES CITED

- State v. Bollig, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199
- State v. Canedy, 161 Wis. 2d 565, 469 N.W.2d 163 (1991)
- State v. Garcia, 192 Wis. 2d 845, 532 N.W.2d 111 (1995)
- State v. Kivioja, 225 Wis. 2d 271, 592 N.W.2d 220 (1999)
- State v. Libke, 60 Wis. 2d 121, 208 N.W.2d 331 (1973)
- State v. Dudrey, 74 Wis. 2d 480, 247 N.W.2d 105 (1976)
- State v. Shanks, 152 Wis. 2d 284, 448 N.W.2d 264 (Ct. App. 1989)
- State v. Shimek, 230 Wis. 2d 730, 601 N.W.2d 865 (Ct. App. 1999)
- State v. Manke, 230 Wis. 2d 421, 602 N.W.2d 139 (Ct. App. 1999)
- State v. Reppin, 35 Wis. 2d 377, 151 N.W.2d 9 (1967)
- State v. Brown, 2006 WI 100, 293 Wis. 2d 594, 716 N.W.2d 906
- State v. Bangert, 131 Wis. 2d 246, 389 N.W.2d 12 (1986)
- State v. Van Camp, 213 Wis. 2d 131, 569 N.W.2d 577 (1997)

- State v. Strickland, 27 Wis. 2d 623, 135 N.W.2d 295 (1965)
- Ernst v. State, 43 Wis. 2d 661, 170 N.W.2d 713 (1969)
- Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)
- United States v. Barker, 514 F.2d 208, 220 (D.C. Cir. 1975)
- United States v. Hyde, 520 U.S. 670, 676, 117 S. Ct. 1630, 137 L. Ed. 2d 935 (1997)
- State v. Jenkins, 2006 WI App 28, 289 Wis. 2d 523, 710 N.W.2d 502