

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 13, 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. 96-0581-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT E. SALLIE,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Dane County: ROBERT A. DE CHAMBEAU, Judge. *Affirmed.*

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

PER CURIAM. Robert Sallie appeals from a judgment convicting him of armed robbery and attempted armed robbery. He also appeals from an order denying postconviction relief. The issue is whether the trial court erred

by denying Sallie's motion to withdraw his no contest plea. Because we conclude that the trial court properly denied the motion, we affirm.¹

The complaint alleged that on November 23, 1994, Sallie entered a store, grabbed money from the cash register and ran. A store employee gave chase and knocked him down. Sallie then got to his feet, threatened the employee with a knife, and escaped with the cash.

The complaint also alleged that on November 30, 1994, Sallie entered another store and grabbed money from a cash register. This time, a store employee grabbed his hand, knocking out some or all of the money he grabbed. After pulling loose, Sallie pulled a knife on another store employee blocking his way and escaped. The State charged Sallie with attempted armed robbery for this incident because it was unclear whether he escaped with any money.

The witnesses to each of these incidents provided testimony at Sallie's preliminary hearing that was consistent with the allegations in the complaint. At Sallie's plea hearing, Sallie stipulated that the court could use the complaint and the preliminary hearing testimony to establish a factual basis for his no contest plea.

Sallie then moved to withdraw his plea, contending that the court accepted it without the adequate factual basis that § 971.08(1)(b), STATS., requires. In both the November 23 and November 30, 1994 incidents, Sallie claimed that the facts showed that he did not take or attempt to take property by using or threatening to use a weapon. Both times, according to Sallie, the robbery or the attempt was completed before he drew the knife. Therefore, in his view, the facts showed only misdemeanor theft and attempted misdemeanor theft. The trial court rejected Sallie's contention, resulting in this appeal.

¹ Sallie was convicted of an additional armed robbery count in a separate judgment. He does not appeal that conviction.

Section 943.32(1), STATS., provides in relevant part that one commits armed robbery by using or threatening to use a dangerous weapon to compel the owner of property to acquiesce in the taking *or* carrying away of it. The crime does not occur without a carrying away. *Moore v. State*, 55 Wis.2d 1, 5-6, 197 N.W.2d 820, 822-23 (1972). Therefore, Sallie cannot reasonably argue that there was no factual basis for armed robbery merely because he did not threaten to use or actually use the knife while taking money from the registers. The crime was not complete until he carried it away, or attempted to do so. Under any reasonable view of the evidence, when he displayed the knife within seconds of grabbing the money and after being chased and knocked down, he was still carrying away or attempting to carry away the money. Therefore, in both instances the trial court properly concluded that the record set forth a factual basis for the charge.

By the Court. – Judgment and order affirmed.

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