

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

May 20, 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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1348-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CLIFTON M. WRIGHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Clifton M. Wright, *pro se*, appeals from a judgment of conviction after he pleaded guilty to felony murder as a party to a crime. Wright also appeals from orders denying his motions for postconviction relief. He raises essentially three issues for review: (1) whether his constitutional and statutory rights were violated by delay before his initial appearance;

(2) whether the trial court erred in concluding that his statement to police was voluntarily given after a valid waiver of his *Miranda* rights; and (3) whether the trial court erred when it denied his ineffective assistance of counsel claim. We reject his arguments and affirm.

I. BACKGROUND.

On the morning of May 7, 1993, Wright was arrested without a warrant in connection with the death of a Shereva Elam. Later that day, he gave a statement to the police confessing his involvement in the murder of Elam.

A criminal complaint was filed on May 14, 1993, charging Wright with one count of felony murder, concealing identity, as party to a crime, contrary to §§ 940.03, 943.32(1)(a) & (2), 939.641(2), and 939.05 STATS., and one count of armed burglary, concealing identity, as party to a crime, contrary to §§ 943.10(2), 939.641(2), and 939.05 STATS.

An initial appearance was held on May 15, 1993. At this appearance, defense counsel moved for dismissal based on the delay between Wright's arrest and his initial appearance. This motion was denied.

On September 21, 1993, a *Miranda/Goodchild* hearing was held.¹ The court ruled that Wright's confession was admissible. Two days later, Wright entered a guilty plea to an amended charge of felony murder as a party to a crime.

After sentencing, Wright filed a motion seeking postconviction relief.² Wright alleged that his trial counsel was ineffective in failing to call as a

¹ See *Miranda v. Arizona*, 384 U.S. 436 (1966); see also *State ex rel. Goodchild v. Burke*, 27 Wis.2d 244, 133 N.W.2d 753 (1965), *cert. denied*, 384 U.S. 1017 (1966).

witness one of the detectives who had been present during the taking of his confession. After a hearing, the trial court denied Wright's motion in a written decision entered on March 14, 1995. The court also revisited and reiterated its decision not to suppress Wright's confession.

On April 24, 1996, Wright filed a *pro se* supplemental post-conviction motion. In this motion, Wright alleged that: (1) he was denied a timely appearance to determine probable cause following his arrest; (2) his *Miranda* waiver and confession were involuntary; and (3) his trial counsel's advice to plead guilty constituted the ineffective assistance of counsel. This motion was denied without an evidentiary hearing in a decision dated April 26, 1996. Wright now appeals.

II. ANALYSIS.

First, Wright claims that the trial court did not have personal jurisdiction over him due to the delay between his arrest and initial appearance. This issue was raised first at Wright's initial appearance and later in his supplemental postconviction motion. As a result of the delay, Wright claims that the charge should have been dismissed with prejudice as the trial court lost personal jurisdiction over him.

As required by § 970.01 STATS., an initial appearance must be conducted "within a reasonable time." In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), the Supreme Court held that a judicial review and determination of probable cause for a warrantless arrest must be held within forty-

² He later filed an amended motion.

eight hours of the arrest. *Id.* at 57. It is uncontested that Wright was arrested without a warrant on May 7, 1993, and that he didn't appear for an initial appearance until May 15, 1993. On September 23, 1993, however, Wright pleaded guilty to an amended charge of felony murder as a party to a crime.

The reasonableness of a detention is determined case by case. *State v. Evans*, 187 Wis.2d 66, 91, 522 N.W.2d 554, 563 (Ct. App. 1994). Whether Wright's constitutional or statutory rights were violated is a question of law that we review *de novo*. See *id.* at 86, 522 N.W.2d at 561.

We agree with the State that claims of a *Riverside* violation and an untimely appearance are waived by a defendant's entry of a guilty plea. See *State v. Aniton*, 183 Wis.2d 125, 128-30, 515 N.W.2d 302, 303-04 (Ct. App. 1994). A guilty plea, made knowingly and voluntarily, waives all nonjurisdictional defects and defenses, including alleged violations of constitutional rights prior to the plea. See *Mack v. State*, 93 Wis.2d 287, 293, 286 N.W.2d 563, 566 (1980). Wright's guilty plea on September 23, 1993 waived his right to challenge a violation of § 970.01(1) STATS., and his right to challenge a violation of the *Riverside* forty-eight-hour rule. See *Aniton*, 183 Wis.2d at 128, 515 N.W.2d at 303.

Next, Wright claims that waiver of his *Miranda* rights and subsequent statement to the police were not freely and voluntarily given. Wright argues that his statement was rendered involuntary by virtue of the alleged incommunicado detention ordered by the police.

The admissibility of Wright's statement was the subject of two evidentiary hearings. At the suppression hearing, the trial court considered whether Wright's statements and his waiver of rights were voluntarily given. His motion was denied after the trial court made a factual determination that Wright

received and waived his *Miranda* rights prior to giving his statement. Further, the court held that Wright's waiver of his rights and the confession itself were voluntarily given.

At a subsequent postconviction hearing, Wright argued that his trial counsel had been ineffective in handling the motion in the pretrial suppression hearing. The trial court denied Wright's claim, stating that trial counsel's actions were neither deficient nor prejudicial. The trial court went on to revisit the voluntariness issue decided in the first hearing, and reiterated its prior decision that proper *Miranda* warnings were administered before Wright gave his statement.

In reviewing the trial court's determinations, we apply a mixed standard of review. A trial court's findings of fact will not be overturned unless they are contrary to the great weight and clear preponderance of the evidence. *State v. Woods*, 117 Wis.2d 701, 715, 345 N.W.2d 457, 465 (1984). The application of these facts to federal or state constitutional principles, however, must be independently reviewed by the appellate court. *State v. Clappes*, 136 Wis.2d 222, 235, 401 N.W.2d 759, 765 (1987).

The trial court made a factual determination at the suppression hearing that Wright was given and waived his *Miranda* rights before he gave his statement. This finding is supported by record. The trial court determined that the police officer's testimony concerning the timing of the *Miranda* warning was more credible than Wright's testimony.

The trial court also found that there was no evidence of coerciveness in the conducting of the interrogation. This finding is also supported by the record. As the trial court stated:

There were no threats; there were no promises; there is no evidence that any assistance was denied the defendant; no evidence that any refreshment or personal creature comforts were denied to him. There is some reference to defendant's feeling ill or being injured [Wright having been arrested after being in an automobile accident], but there is no evidence that the defendant had any visible injuries or that he requested medical attention at any time.

We hold that the trial court's findings of fact were not clearly erroneous. In applying these facts to the principle of voluntariness, we further hold that Wright's waiver of his *Miranda* rights and statement to the police were voluntarily made.

Finally, Wright asserts two ineffective assistance of counsel claims: (1) that his trial counsel was ineffective in failing to challenge the delay between his arrest and initial appearance; and (2) that his trial counsel was ineffective in failing to introduce evidence at the suppression hearing of his incommunicado detention.³ Wright also suggests that his trial counsel was ineffective in advising him to plead guilty.

To establish an ineffective assistance of counsel claim, a defendant must prove that the counsel's performance was deficient and that such deficient performance prejudiced his case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The defendant bears the burden of persuasion for both prongs of this test. *Id.* In reviewing the trial court's decision, we accept its findings of fact unless

³ In his postconviction motion, Wright claimed that during his suppression hearing, his trial counsel had been ineffective in failing to call as a witness one of the detectives who had been present during his interrogation. This motion was denied after an evidentiary hearing. In his supplemental postconviction motion, Wright claimed that his trial counsel's advice to plead guilty constituted ineffective assistance of counsel. This motion was denied without a hearing. In its ruling, the trial court also considered the timely appearance and voluntariness issues regarding ineffective assistance of counsel.

they are clearly erroneous, while reviewing “[t]he ultimate determination of whether counsel’s performance was deficient and prejudicial” *de novo*. *State v. Johnson*, 153 Wis.2d 121, 127-28, 449 N.W.2d 845, 848 (1990).

Wright has failed to make a showing of either deficient performance or prejudice. Trial counsel challenged the delay between his arrest and initial appearance, and actively pursued a motion to suppress his statement. Further, Wright does not make allegations that are sufficient to prove prejudice under *Strickland*. Likewise, he fails to make sufficient allegations to support his claim that trial counsel was ineffective in advising him to plead guilty. In his brief, Wright merely alleges deficient performance, but does not state how this performance prejudiced his case. Thus, he has not made a sufficient showing of ineffective assistance of counsel. *See State v. Bentley*, 201 Wis.2d 303, 312, 548 N.W.2d 50, 54 (1996).

By the Court.—Judgment and orders affirmed.

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

