

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 15, 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. 96-1741-CR-NM

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID W. KALK,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. Counsel for David W. Kalk has filed a no merit report pursuant to RULE 809.32, STATS. Kalk has responded to it. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

When Kalk failed to report back to custody following a Huber release period, two sheriff's deputies were given a description of Kalk and

informed that he was visiting his girlfriend, Barbara Anderkin. The deputies proceeded to Anderkin's home and entered it when they saw a person resembling Kalk attempt to flee through a side door. After a struggle, they arrested Kalk. He was then charged with battery to a police officer, § 940.20(2), STATS., resisting an officer, § 946.41(1), STATS., and disorderly conduct, § 947.01, STATS.

Just before his jury trial, Kalk moved for and received an order discharging his attorney. The trial was postponed and a second attorney was appointed. The day before the rescheduled trial, Kalk again asked the court to discharge counsel and postpone the trial so that he could again obtain replacement counsel. The trial court deemed the motion an untimely attempt to further delay matters, and refused to reschedule the trial. Kalk received the option of proceeding with or without counsel, and chose to be represented by her at the subsequent trial.

The jury convicted Kalk on all three charges. He received consecutive sentences of two years, two years and five years, with the court staying the latter term and imposing five years probation in its stead. Kalk then brought a postconviction motion alleging ineffective assistance of trial counsel. The trial court denied the motion after a hearing on the issue.

Counsel's no merit report addresses whether the jury had sufficient evidence to find Kalk guilty, whether he received effective assistance from counsel, whether he was illegally arrested, and whether the trial court properly exercised its sentencing discretion. We concur with counsel's analysis of these issues and his conclusion that none has merit.

In his response, Kalk contends that the arresting officers violated his Fourth Amendment right to be free from illegal searches and seizures. The officers entered Anderkin's home in pursuit of Kalk without a search warrant or permission. The officers did, however, have probable cause to arrest Kalk, and the absence of a search warrant for Anderkin's home did not prevent the arrest. *State v. Seals*, 65 Wis.2d 434, 437, 223 N.W.2d 158, 160 (1974). While Anderkin had an expectation of privacy in her home, Kalk cannot assert her rights to protect himself from criminal liability.

Kalk also argues that the court erroneously exercised its discretion when it refused to grant him an adjournment to seek alternative counsel. While Kalk, an indigent defendant, has the right to counsel, he does not have the right to the counsel of his choice. *Rahhal v. State*, 52 Wis.2d 144, 147, 187 N.W.2d 800, 803 (1971); *see also Scarbrough v. State*, 76 Wis.2d 87, 102, 250 N.W.2d 354, 361 (1977); *State v. Johnson*, 50 Wis.2d 280, 283, 184 N.W.2d 107, 109 (1971). The right to counsel does not sanction a defendant's attempts to manipulate that right in an effort to thwart and obstruct the orderly procedure for trial or to interfere and disrupt the administration of justice. *Rahhal*, 52 Wis.2d at 148, 187 N.W.2d at 803. The trial court properly exercised its discretion in denying Kalk's motion in order to retain control of its calendar and conduct its business promptly and efficiently. *Phifer v. State*, 64 Wis.2d 24, 30, 218 N.W.2d 354, 357 (1974).

Our review of the record discloses no other potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Kalk's counsel of any further representation of him in this matter.

By the Court.— Judgment and order affirmed.