

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

October 18, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 99-2575-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DAVID Z. WILLIAMS,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments of the circuit court for Racine County:  
EMILY S. MUELLER, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. David Z. Williams appeals from judgments convicting him of two counts of third-degree sexual assault on his guilty pleas. On appeal, he argues that his Sixth Amendment right to counsel was violated when he was questioned by an investigator after he invoked his right to counsel.

We conclude that Williams did not invoke his Sixth Amendment right to counsel and affirm the circuit court's refusal to suppress his statements to the investigator.

¶2 The following facts are undisputed. Williams was on probation in the fall of 1998. He did not return to his approved residence on October 1, and his probation agent issued a probation apprehension warrant. Williams was apprehended on November 10 and detained in the Racine county jail on a probation hold. On November 11, a probation agent interviewed Williams about his activities from October 1 until his apprehension. Also, on November 11, Williams completed an application for public defender representation.

¶3 Meanwhile, in mid-October, a Racine County Sheriff's Department investigator informed the parole agent that she wanted to speak with Williams about an alleged sexual assault of Vanessa O. A criminal complaint filed on November 10 charged Williams with two counts of sexual assault of Vanessa O. A judge also signed an arrest warrant on November 10, although the warrant was never served on Williams. The investigator learned that Williams had been apprehended and interviewed him in the jail on November 13 about the Vanessa O. assault. Before the interview began, the investigator obtained Williams's waiver of his *Miranda*<sup>1</sup> rights. The investigator then asked Williams about sexual contact with Vanessa O. He denied having contact with Vanessa O. but stated that he had engaged in sexual relations with two other juveniles, Sarah B. and Michelle T.

¶4 An amended criminal complaint charged Williams with second-degree sexual assault of Vanessa O., Sarah B. and Michelle T. As part of a plea

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

agreement, the charges involving Vanessa O. were dismissed and read in for sentencing. Williams pled guilty to the charges involving Sarah B. and Michelle T.

¶5 Before he pled guilty, Williams moved to suppress his statements to the investigator concerning sexual relations with Sarah B. and Michelle T. because the statements were obtained in violation of his Sixth Amendment right to counsel. The circuit court denied the motion. Williams challenges this ruling on appeal.

¶6 Whether Williams's statements were procured in violation of his Sixth Amendment right to counsel presents an issue of constitutional fact. *See State v. Dagnall*, 2000 WI 82, ¶26, 236 Wis. 2d 339, 612 N.W.2d 680. We will uphold the circuit court's findings of historical or evidentiary fact unless those findings are clearly erroneous. *See id.* at ¶27. However, we will independently apply the relevant constitutional principles to the findings of the circuit court. *See id.*

¶7 The applicable constitutional principles are set forth in *Dagnall*. The Sixth Amendment right to counsel attaches after the commencement of adversary judicial proceedings, i.e., a criminal complaint has been filed or an arrest warrant has been issued. *See id.* at ¶30. This right to counsel is "offense-specific," i.e., "[i]t is tied to the crime or crimes with which the accused is charged." *Id.* at ¶32. The Sixth Amendment right to counsel must be invoked by a defendant, *see id.* at ¶48, but "cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced," *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991).

¶8 In addition to the undisputed facts recited above, the circuit court found that at the time the investigator interviewed Williams on November 13,

neither the investigator nor Williams knew that charges and a warrant had been issued relating to the Vanessa O. allegations. The investigator gave Williams his *Miranda* rights and he waived them.

¶9 The circuit court noted that the Sixth Amendment right to counsel is offense specific and Williams had not sought counsel relating to the Vanessa O. sexual assault allegations because he did not know he had been charged in that case. Because he did not invoke his Sixth Amendment right to counsel relating to the Vanessa O. charges, Williams's statements to the investigator need not be suppressed.

¶10 The circuit court found that Williams did not know that he had been charged with a sexual assault when he applied for public defender representation on November 11. This factual finding is not disputed on appeal and is not clearly erroneous. Therefore, we agree that Williams's November 11 request for counsel cannot be construed as an invocation of the offense specific Sixth Amendment right to counsel relating to the Vanessa O. sexual assault charges. Because Williams did not invoke his Sixth Amendment right to counsel and does not claim that his *Miranda* rights were violated, the circuit court correctly declined to suppress Williams's statements to the investigator.<sup>2</sup>

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<sup>2</sup> Once the right to counsel has attached and been invoked, "any subsequent waiver during a police-initiated custodial interview is ineffective." *State v. Dagnall*, 2000 WI 82, ¶48, 236 Wis. 2d 339, 612 N.W.2d 680 (citation omitted).

*By the Court.*—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5 (1997-98).

