

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 13, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal Nos. 2004AP2945-CR
2004AP2946-CR**

**Cir. Ct. Nos. 1999CF2256
2000CF1180**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY D. WOODS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Deininger, JJ.

¶1 PER CURIAM. Timothy Woods appeals from a judgment of conviction and an order denying his motion for postconviction relief. The

dispositive issue is whether his no-contest plea waived a speedy trial claim. We conclude it did. We affirm.

¶2 Although Woods’ opening brief is somewhat unclear, he clarifies in his reply brief that his argument on appeal concerns only his claim that he was denied his right to a speedy trial under the Sixth Amendment, and he is not seeking a remedy under the Interstate Agreement on Detainers (IAD), WIS. STAT. § 976.05. Woods pled no contest to several felony and misdemeanor counts. At the time of his plea, he sought to preserve his right to continue to raise a certain issue or issues related to IAD and/or speedy trial, and the State agreed. As the State now acknowledges, the State should not have agreed to that condition in the plea, because a guilty or no-contest plea ordinarily functions as a waiver of these issues as grounds for postconviction relief.

¶3 After the plea was accepted, the court held a hearing on Woods’ motion to dismiss. That motion, grounded solely on the IAD, was denied. After the conviction was entered, Woods filed a postconviction motion that asserted denial of his speedy trial right under the Sixth Amendment. The circuit court denied that motion without an evidentiary hearing on the ground that Woods had not preserved the issue at the time of his plea, and therefore it was waived. The court concluded that “there is no way that the facts at a hearing here could establish” that Woods thought he was preserving both an IAD and speedy trial claim.

¶4 On appeal, in response to Woods’ Sixth Amendment speedy trial argument, the State argues that he did not preserve that issue at the time of his plea. We agree. Woods does not appear to squarely address the waiver issue in his reply brief. The record of the plea hearing shows that the discussion about

preserving issues for further consideration was consistently and repeatedly focused on the IAD issue. The only passage that gives any possible basis to argue that Woods thought he was preserving a separate speedy trial claim is late in the discussion when Woods responded to the court's question about whether he wanted to enter no contest pleas as follows:

With the understanding that I have a right to appeal the I.A.D. That I have a right to appeal as far as the I.A.D. issue is concerned. You know what I mean. That my rights are preserved. That I'm preserving my rights to attack this under I.A.D. and my speedy right to trial violation. As long as I preserve those rights.

To this the prosecutor replied: "Your Honor, for what it's worth, the State's position is that Mr. Woods has preserved those rights, that this plea would in no way affect his right to continue to litigate that issue, which he has been litigating for some time now."

¶5 We conclude, in the context of the entire discussion, the only reasonable interpretation of the quoted passage is that Woods' reference to "my speedy right to trial violation" relates solely to his allegation that Wisconsin did not move speedily enough under the IAD. As the circuit court concluded, there is no possible evidence that could be presented at a hearing that would allow a reasonable fact finder to conclude Woods' intent was broader than the IAD issue, and therefore the motion was properly denied without an evidentiary hearing. *See State v. Allen*, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433 (court may deny postconviction motion without a hearing if record conclusively shows defendant is not entitled to relief). Accordingly, we need not address the merits of the speedy trial issue because that issue was waived by Woods' no-contest pleas.

By the Court.—Judgment and order affirmed.

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

