

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2007

David R. Schanker
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 No. 2006AP2559-CR

Cir. Ct. No. 2005CF445

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY D. KNICKMEIER,

DEFENDANT-APPELLANT.

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

¶1 DYKMAN, J.¹ Jeffrey Knickmeier appeals from a judgment of conviction entered after he pled no contest to three counts of misdemeanor theft,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

contrary to WIS. STAT. § 943.20(1)(b). Knickmeier contends that the circuit court erred in denying his motions to dismiss the State's complaint based on statute of limitations and prosecutorial delay claims. We conclude that Knickmeier's statute of limitations claims are without merit and that the guilty-plea-waiver rule bars the remainder of Knickmeier's arguments. Accordingly, we affirm the trial court's judgment of conviction and prior orders.

Background

¶2 On February 26, 1999, Jeffrey Knickmeier received a \$45,785 check from James E. Reinke, and executed an agreement to supervise and administer these funds pursuant to specific guidelines. Those guidelines permitted Knickmeier to disburse \$800 for accrued attorney fees, disburse \$200 per week to Reinke as a living allowance, and disburse the remaining funds only after oral or written authorization from Reinke. The "intent of this agreement [was] to conserve the assets of Reinke" as he coped with his mother's recent death.

¶3 On September 27, 2000, Reinke filed a grievance against Knickmeier with the Office of Lawyer Regulation ("OLR"). After investigating the grievance, OLR filed a stipulation with the supreme court in September of 2003 detailing Knickmeier's mismanagement and misappropriation of Reinke's assets. The supreme court issued an order regarding Knickmeier's conduct on July 21, 2004. The State was awaiting the outcome of the OLR's investigation before deciding whether any action was appropriate in this case. In November of 2004, the State received several documents related to the OLR's investigation and began its own investigation of the matter. On February 23, 2005, the State charged Knickmeier with one felony count of theft—intentionally using more than \$2,500 without the owner's consent, contrary to his authority, and with intent to

convert it for the use of a person other than the owner—on and between March 1, 1999, and February 26, 2000.

¶4 The complaint detailed several transactions in which Knickmeier disbursed funds without prior approval and for personal use. Specifically, the complaint alleged that Knickmeier used the funds to buy a motorcycle in April of 1999. The purchase price of the motorcycle was \$9,871.33, yet Knickmeier withdrew \$10,800 from Reinke’s account. Although Knickmeier claimed that the motorcycle was for both his and Reinke’s use, Knickmeier did not contribute toward the purchase price and instead executed a promissory note to Reinke for \$5,400. Knickmeier retained possession of the motorcycle after several weeks, and Reinke used the motorcycle on only two occasions. Three months after purchasing the motorcycle, Knickmeier sold the motorcycle to another client for \$9,000 but only received \$8,000 in cash. Of this \$8,000, he retained \$4,700 for himself.

¶5 The complaint further alleged that in May of 1999, Knickmeier withdrew \$653 for various sporting event tickets. The parties stipulated that \$451 worth of the tickets were “either used [by Knickmeier] or transferred.” Knickmeier also allegedly withdrew \$1,100 on two separate occasions in May as “Principal Advance[s]” to himself.

¶6 The complaint further alleged that some time in late 1999 or early 2000, Knickmeier received \$2,287 of bail money and money that had been seized as evidence. Of that \$2,287 received, Knickmeier expended \$851.40 on Reinke’s behalf and retained the remaining \$1,471.60 for himself.

¶7 The complaint ends with the following:

Reinke stated that after he complained about the defendant while he was in prison, the Office of Lawyer Regulation gave him a copy of [Knickmeier's] hand written itemization of the disbursement of the \$45,785.00 that he had received for selling property he owned. Reinke stated that at that time, he learned that the entire amount had been spent by the defendant in approximately three months.... Reinke stated that he did not give [Knickmeier] permission to spend the money without his approval and that he never gave approval to spend the money. Reinke stated that all he knows is that the money is gone and that [Knickmeier] had been in control of the account.

In response to the State's charge, Knickmeier filed twelve motions to dismiss. He withdrew most of these, but the trial court ruled on two motions—a statute of limitations claim and a prosecutorial delay claim.

¶8 As to the statute of limitations claim, Knickmeier made two arguments: (1) the complaint was insufficient to allege a felony and therefore the three-year misdemeanor statute of limitations should apply;² and (2) the complaint's appendix includes references to conduct that occurred more than six years prior to the commencement of the action and therefore the entire action must be barred under the six-year statute of limitations. The trial court rejected both arguments. It found that there were sufficient facts in the complaint to allege a felony and that although the appendix referred to conduct occurring more than six years prior to the commencement of the action, this did not require dismissal of crimes alleged to have occurred within the six years preceding the commencement of the action.

² Under WIS. STAT. § 943.20(3)(c), if the value of the property misappropriated is in excess of \$2,500, a defendant is guilty of a Class C felony, which must be prosecuted within six years of the misappropriation. *See* WIS. STAT. § 939.74(1). However, under § 943.20(3)(a), if the value of the property misappropriated does not exceed \$1,000, a defendant is guilty of a Class A misdemeanor, which must be prosecuted within three years of the misappropriation. *See* § 939.74(1).

¶9 As to the prosecutorial delay claim, Knickmeier contended that correspondence between Reinke and the prosecutor in 2003 showed that the prosecutor intentionally delayed and that the delay prejudiced Knickmeier. The trial court found that there was no evidence that any of the delay resulted from the State's desire to gain a tactical advantage over Knickmeier and that there was no evidence of actual prejudice to Knickmeier's defense.

¶10 Shortly after these two rulings, Knickmeier agreed to plead no-contest to three counts of misdemeanor theft, and he and the State submitted a joint recommendation to the trial court. In May of 2006, the trial court approved the agreement, accepted the pleas to the three misdemeanor charges, entered a judgment of conviction on each of those, and sentenced Knickmeier consistent with the parties' joint recommendation.

Analysis

¶11 On appeal, Knickmeier raises the same arguments that he raised in the trial court. When reviewing a judgment of conviction, we may review all prior orders and rulings adverse to the appellant, made in the action, and not previously appealed and ruled upon. *See* WIS. STAT. § 809.10(4).

¶12 First, we turn to the trial court's conclusion that the statute of limitations did not bar the State's action. Whether the time limitation expired prior to the commencement of the criminal action requires an application of WIS. STAT. § 939.74(4). This is a question of law that we review de novo. *See State v. Slaughter*, 200 Wis. 2d 190, 196, 546 N.W.2d 490 (Ct. App. 1996).

¶13 Knickmeier's argument is as follows. Because the complaint details so many instances where he allegedly misappropriated funds between March 1,

1999, and February 26, 2000, the complaint does not sufficiently allege one instance where he misappropriated more than \$2,500, as purportedly required by a felony theft charge. *See* WIS. STAT. § 943.20(3)(c). Therefore, he contends, the complaint alleges no more than a misdemeanor under WIS. STAT. § 943.20(3)(a). Because misdemeanor charges are time barred if brought later than three years from the commission of the crime, Knickmeier contends that the statute of limitations bars his “misdemeanor charge.” *See* WIS. STAT. § 939.74(1).

¶14 Knickmeier’s syllogism possesses an appealing simplicity, but we agree with the trial court’s conclusion that the State has sufficiently alleged a felony under WIS. STAT. § 943.20(3)(c). “The test of a complaint is of ‘minimal adequacy, not in a hypertechnical but in a common sense evaluation, in setting forth the essential facts establishing probable cause.’” *State v. Smaxwell*, 2000 WI App 112, ¶5, 235 Wis. 2d 230, 612 N.W.2d 756 (quoting *State ex rel. Evanow v. Seraphim*, 40 Wis. 2d 223, 226, 161 N.W.2d 369 (1968)). As detailed previously, the complaint alleged several instances of misappropriation in excess of \$2,500.³ Not only did some of these instances alone sufficiently allege a misappropriation of over \$2,500, but unquestionably the aggregate of these instances sufficiently alleged that between March 1, 1999, and February 26, 2000, Knickmeier misappropriated over \$2,500 of Reinke’s money.

³ Specifically, the complaint alleges the following facts: (1) the \$10,800 motorcycle purchase, which Knickmeier possessed and used almost exclusively; (2) the transfer of the motorcycle to Knickmeier’s client three months after its purchase at a significant discount; (3) the \$4,700 payment for the motorcycle, which Knickmeier kept for himself; (4) the \$451 worth of athletic event tickets, which Knickmeier used or transferred; (5) the \$1,100 withdrawals on two separate occasions, which Knickmeier characterized as “Principal Advance[s]” to himself; (6) the \$1,471.60 of returned bail and seized evidence, which Knickmeier kept for himself; and (7) Reinke’s statement explaining how the entire \$45,785 had been spent within three months without his consent.

¶15 Knickmeier further contends that if this court applies the six-year statute of limitations for felonies, the action is likewise barred under that statute of limitations because the complaint's appendix included references to conduct that occurred more than six years prior to the commencement of this action. The appendix to the complaint included a copy of the stipulation Knickmeier entered into with the OLR. This copy of the stipulation included exhibits that refer to events or conduct, not necessarily criminal, occurring prior to six years before the commencement of this action.

¶16 We agree with the trial court's conclusion that the references in the exhibits to the stipulation do not require dismissal of crimes alleged to have happened within the six years preceding the commencement of the action. Knickmeier's argument endorses too liberal an approach to applying a statute of limitations. WISCONSIN STAT. § 939.74(1) bars the *prosecution* of felonies committed more than six years before commencement of the action. In the instant case, the State prosecuted conduct that it claimed was committed "on and between March 1, 1999, and February 26, 2000." An exhibit's references to a stipulation, attached to the complaint, do not control the charge or prosecution. As the trial court noted, if subsequent to its ruling the State attempted to admit into evidence acts in the exhibit occurring prior to March 1, 1999, the proper analysis would be to determine if these other acts were admissible for some other purpose. *See State v. Sullivan*, 216 Wis. 2d 768, 782-83, 576 N.W.2d 30 (1998); *Whitty v. State*, 34 Wis. 2d 278, 292, 149 N.W.2d 557 (1967).

¶17 Knickmeier argues that *Smaxwell* holds that the complaint must be considered in its entirety. In *Smaxwell*, 235 Wis. 2d 230, ¶1, "[t]he facts giving probable cause that ... Smaxwell committed th[e] crime were not specifically contained in writing within the four corners of the complaint." Instead, the facts

were detailed in an unsworn incident report attached to the complaint. *Id.* We agree that the complaint must be considered in its entirety when determining the sufficiency of the complaint. However, the *Smaxwell* rule is better suited for deciding what to consider when determining the sufficiency of a complaint, rather than what to consider when determining the application of the statute of limitations. The proper inquiry, as we have explained, is to consider the conduct the State is prosecuting. It is clear from the face of the complaint that the State is prosecuting conduct that occurred “on and between March 1, 1999, and February 26, 2000.”

¶18 Next, we turn to the trial court’s conclusion that there was insufficient evidence to establish prosecutorial delay. The State contends that Knickmeier’s no-contest plea waived his right to appeal the trial court’s prosecutorial delay ruling. This issue implicates questions of waiver and what effect a no-contest plea has upon the right to be free from prosecutorial delay. These are questions of law, which we review de novo. *See State v. Kelty*, 2006 WI 101, ¶13, 294 Wis. 2d 62, 716 N.W.2d 886.

¶19 As Knickmeier points out, the cases the State cites for the proposition that a no-contest plea relinquishes a right to appeal a trial court’s prosecutorial delay ruling are speedy trial cases. *See State v. Lemay*, 155 Wis. 2d 202, 455 N.W.2d 233 (1990) and *Hatcher v. State*, 83 Wis. 2d 559, 266 N.W.2d 320 (1978). Because a prosecutorial delay claim is different from a speedy trial claim, Knickmeier contends that these cases are not applicable to a prosecutorial delay claim. Knickmeier is correct in stating that a prosecutorial delay claim is substantively different from a speedy trial claim. *See, e.g., United States v. MacDonald*, 456 U.S. 1, 6-8 (1982) (“The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by

passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations.”). However, this does not mean that a no-contest plea does not waive his right to appeal a prosecutorial delay claim.

¶20 “The general rule is that a guilty [or] no-contest ... plea ‘waives all nonjurisdictional defects, including constitutional claims.’” *Kelty*, 294 Wis. 2d 62, ¶18 (quoting *State v. Multaler*, 2002 WI 35, ¶54, 252 Wis. 2d 54, 643 N.W.2d 437). This “guilty-plea-waiver rule” is a rule of administration and does not involve the court’s power to address the issues raised. *State v. Riekkoff*, 112 Wis. 2d 119, 124, 332 N.W.2d 744 (1983). However, the Wisconsin Supreme Court has permitted very few exceptions to the guilty-plea-waiver rule. *See generally Kelty*, 294 Wis. 2d 62, ¶¶40-43.

¶21 We conclude that Knickmeier’s plea of no-contest waives his right to argue on appeal that he suffered prejudice from an alleged prosecutorial delay. This approach is consistent with the Supreme Court’s statement that “[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Although we retain discretionary power to review waived claims, particularly “if the issues are of state-wide importance or resolution will serve the interests of justice” and there are no disputed facts, *see State v. Grayson*, 165 Wis. 2d 557, 561, 478 N.W.2d 390 (Ct. App. 1991), we see no reason to do so here.

¶22 In sum, we agree with the trial court’s conclusion that there were sufficient facts in the complaint to allege that Knickmeier committed a felony and that although the appendix referred to conduct occurring more than six years prior

to the commencement of the action, this did not require dismissal of crimes alleged to have happened within the six years preceding the commencement of the action. We decline to review Knickmeier's claim of prosecutorial delay on appeal. We therefore affirm the trial court's judgment of conviction.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4 (2005-06).

