

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 2008

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. 2007AP1768-CR

Cir. Ct. No. 2006CF1341

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TONY R. MORGAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

Before Fine, Kessler, JJ., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. In separate criminal complaints, Tony R. Morgan was charged with possession of cocaine with intent to deliver and with possession of heroin with intent to deliver. The cases were tried in a single court trial, and the court found Morgan guilty of both charges. Morgan filed a notice of appeal only

in the cocaine case. The only issue that Morgan raises on appeal, however, concerns a suppression motion filed in the heroin case. Because Morgan did not file a notice of appeal in the heroin case, this court lacks jurisdiction to review the suppression issue. Because Morgan does not raise any appellate argument pertinent to the cocaine case, we affirm the judgment of conviction.

BACKGROUND

¶2 On March 7, 2006, a criminal complaint was filed in circuit court case No. 2006CF1341 charging Morgan with possession of cocaine with intent to deliver. On April 20, 2006, a criminal complaint was filed in circuit court case No. 2006CF2113 charging Morgan with possession of heroin with intent to deliver.¹ Beginning with a May 12, 2006 status conference, the cases were largely tracked together, and both cases were scheduled for a trial to the court on November 27, 2006.

¶3 On that date, before the start of trial, Morgan’s attorney requested that a *Miranda-Goodchild*² hearing be held. When the circuit court inquired as to whether each case had a statement, Morgan’s attorney replied that statements were made “in the heroin case ending [in] 2113” and that “[t]here’s no statement in the [d]elivery charge ending in 1341.” The court then conducted an evidentiary hearing “in case ending in [2]113.” The arresting officer and the detective who

¹ The chronological history for circuit court case No. 2006CF2113, the case in which Morgan did not file a notice of appeal, is taken from the electronic court record for that case as maintained by the clerk of the circuit court and viewable through the Wisconsin Circuit Court Access website.

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

interviewed Morgan after his arrest testified for the State. Morgan testified on his own behalf. At the conclusion of the hearing, the circuit court denied Morgan's motion to suppress. The cases then proceeded to trial and, as noted above, the circuit court found Morgan guilty of both charges.

¶4 After the circuit court sentenced Morgan on February 1, 2007, Morgan filed a notice of intent to pursue postconviction relief in both cases on February 5, 2007. Transcripts were then prepared and provided to appellate counsel. On July 27, 2007, Morgan filed a notice of appeal in the cocaine case, circuit court case No. 2006CF1341. Morgan never filed a notice of appeal in the heroin case, circuit court case No. 2006CF2113.

DISCUSSION

¶5 This court must observe the limits of appellate jurisdiction and we are bound to inquire into our jurisdiction. *See State ex rel. Teaching Assistants Ass'n v. The Univ. of Wis.-Madison*, 96 Wis. 2d 492, 495, 292 N.W.2d 657 (Ct. App. 1980). “[A]ppellate court jurisdiction stems from the filing of the notice of appeal from an appealable order.” *Hartford Ins. Co. v. Wales*, 138 Wis. 2d 508, 516, 406 N.W.2d 426 (1987). Because Morgan never filed a notice of appeal in the heroin case, circuit court case No. 2006CF2113, this court has no jurisdiction to review the judgment of conviction or any other order made in that case, including the circuit court's denial of the suppression motion.

¶6 We recognize that, under WIS. STAT. § 807.07(1) (2005-06),³ this court may “overlook defects or omissions in the appeal papers if the appeal was

³ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

taken in good faith.” *State v. Malone*, 136 Wis.2d 250, 260, 401 N.W.2d 563 (1987). That statute, however, “addresses jurisdiction over the parties and not the subject matter jurisdiction of the appellate court. Lack of subject matter jurisdiction of an appellate court cannot be waived.” *Id.* at 260-61 (quoting Judicial Council Committee’s Note, 1979, WIS. STAT. § 807.07). Because the filing of the notice of appeal “confers jurisdiction” on this court, *see Hartford Ins.*, 138 Wis. 2d at 516, the failure to file a notice of appeal constitutes a defect in subject matter jurisdiction and, therefore, § 807.07(1) does not apply.

¶7 Similarly, Morgan’s failure to file a notice of appeal in circuit court case No. 2006CF2113 is not an “inconsequential error in the content of the notice of appeal” under WIS. STAT. RULE 809.10(1)(f). The cases addressing inconsequential error focus on the description of the document appealed from. *See Ziebell v. Ziebell*, 2003 WI App 127, ¶8 n.2, 265 Wis. 2d 664, 666 N.W.2d 107. Here, Morgan did not merely mis-identify the document appealed from. Rather, he wholly failed to file a notice of appeal in the case in which his appellate issue is found.

¶8 For the above reasons, we conclude there is no appellate subject matter jurisdiction to review the only issue raised by Morgan. Accordingly, we do not address the merits of the argument set forth in Morgan’s appellate brief. Additionally, because Morgan does not raise any argument that concerns the judgment of conviction in the case being appealed, circuit court case No. 2006CF1341, we affirm that judgment.

By the Court.—Judgment affirmed.

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

