

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 14, 2009

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. 2008AP621-CR

Cir. Ct. No. 2005CF2385

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LORENZO DIONDRE HARRIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Lorenzo Harris pled guilty to a charge of armed robbery as a party to a crime. The circuit court imposed a fifteen-year prison sentence, consisting of a minimum of ten years in initial confinement and a maximum of five years on extended supervision. Harris appeals, contending that

the circuit court erred when it denied his request for new counsel prior to his entering his plea. Because we conclude that Harris's subsequent guilty plea waived any such error by the circuit court, we affirm the judgment of conviction.

¶2 The circumstances of the crime itself have little direct relevance to this appeal. We note only that Harris and an accomplice approached a car with the intent to rob the occupants. The car was driven by a woman, and the car was carrying three passengers, including the woman's daughter. Harris's accomplice was armed and, after Harris took some items from the driver, Harris's accomplice shot the front-seat passenger because he thought the passenger had a gun. The passenger died from his wound.

¶3 Harris was originally charged with felony murder as a repeat offender. The public defender appointed counsel to represent Harris, and counsel requested a competency evaluation for Harris. After Harris was examined by a mental-health professional, the circuit court held an evidentiary hearing. After hearing the evidence, the circuit court held that Harris was competent to stand trial.

¶4 Harris then entered a plea of not guilty by reason of mental disease or defect. He received further medical evaluation. Harris, by his original counsel, further moved to suppress statements that he made to Milwaukee police. The circuit court held a number of hearings on the suppression motion, but the court ultimately denied the motion.

¶5 Shortly thereafter, Harris's counsel advised the court that she wished to withdraw from further representation of Harris. In support, she explained that Harris had requested that she withdraw because he had lost confidence in her. At a subsequent hearing, the circuit court explained to Harris that because he was

indigent, the public defender would appoint him “one more attorney to represent” him, but that it was unlikely that another attorney would be appointed should he become unhappy with his second attorney’s representation. After Harris stated that he understood and that he wished to have new counsel appointed, the public defender appointed Attorney Scott Anderson to represent Harris in September 2006. A few weeks later, Attorney Anderson appeared in court on Harris’s behalf. A month later, trial was set for January 16, 2007.

¶6 On the day of trial, Harris asked that the court relieve Attorney Anderson of further representation and for the appointment of new counsel. Harris claimed that Attorney Anderson had been his attorney for only two weeks and that he was refusing to follow his instructions. The circuit court informed Harris that it was aware Attorney Anderson had been appointed some months earlier, and Harris then took issue with the amount of contact he had had with Attorney Anderson. The circuit court interpreted Harris’s claims as an illegitimate attempt to delay the trial, and Attorney Anderson informed the court that he was prepared for the scheduled trial. The circuit court noted that the witnesses and jury were present, and it denied Harris’s request.

¶7 Prior to the start of trial, the district attorney informed the circuit court of the terms of the plea bargain it had offered Harris. Harris personally told the court that he wished to accept the previously-rejected offer. The district attorney reiterated that, under the plea bargain, the State would drop all charges against Harris except those stemming from Harris’s robbery of the driver. The State confirmed that it would drop the felony murder charge on the condition that Harris plead guilty to an armed robbery charge. The circuit court, after ensuring that there was a basis for the State’s amendments, then engaged Harris in a lengthy plea colloquy to determine if he was knowingly, intelligently, and voluntarily

entering his plea. Toward the end of the colloquy, the circuit court asked Harris about Attorney Anderson's representation, and Harris affirmed that he had had sufficient time to speak with counsel and that he was satisfied with Attorney Anderson's representation.

¶8 On appeal, Harris contends that the circuit court erroneously exercised discretion by failing to consider the appropriate factors when it denied his request to have substitute counsel appointed and assuming, without support, that Harris's request for new counsel was a dilatory tactic. As noted, we conclude that Harris waived his right to appeal on this issue by accepting the State's plea offer and pleading guilty.

¶9 Harris correctly notes that when a defendant requests new counsel that will lead to a delay in proceedings, the court should consider the length of the delay, whether there is other competent counsel available to try the case, whether other continuances have been requested, the convenience or inconvenience to the parties, witnesses and the courts, and whether the purpose of the delay is for legitimate reasons or is merely dilatory. *Phifer v. State*, 64 Wis.2d 24, 31, 218 N.W.2d 354 (1974). The court should consider these factors after inquiring into the basis for the defendant's complaints. *State v. Lomax*, 146 Wis. 2d 356, 362, 432 N.W.2d 89 (1988). Harris argues that the circuit court did not question him thoroughly regarding the basis of his request for new counsel and assumed without support that he was merely attempting to delay the trial.

¶10 Even assuming that Harris's characterization of the circuit court's actions is accurate—and we would have strong reservations about accepting that argument on the record before us—the simple fact is that by pleading guilty, Harris waived his right to complain about the circuit court's action. “The general

rule is that a guilty ... plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations occurring prior to the plea.” *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. As the State notes, this court has not hesitated to apply the guilty-plea waiver rule in instances where the circuit court had denied a pre-plea request for new counsel, *see e.g.*, *State v. Rockette*, 2005 WI App 205, ¶32, 287 N.W.2d 257, 704 N.W.2d 382, and we can see no reason not to apply the rule in this instance. This is especially true in light of the careful and comprehensive guilty-plea colloquy in which the circuit court and Harris engaged and Harris’s statements during that colloquy that he had had sufficient time to consult with counsel and that he was satisfied with counsel’s representation.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

