

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 23, 2002**

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 No. 01-1291-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-CF-60**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,  
  
PLAINTIFF-RESPONDENT,  
  
V.  
  
CHRISTOPHER L. RUSSELL,  
  
DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Price County: DOUGLAS T. FOX, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Christopher Russell appeals a judgment convicting him of one count of possession of THC, second offense, contrary to WIS. STAT.

§ 961.41(3g)(e).<sup>1</sup> He also appeals the order denying his motion for postconviction relief. Russell argues that because the State failed to file an information, the circuit court was deprived of subject matter jurisdiction to accept his plea, impose sentence or enter a judgment of conviction. We reject Russell's argument and affirm the judgment and order.

### **BACKGROUND**

¶2 On August 17, 2000, Russell was charged with one felony count of possession of marijuana as a second offense and one misdemeanor count of possession of drug paraphernalia. At his initial appearance, Russell pled no contest to the marijuana possession charge, second offense, in exchange for the State recommending eighteen months' probation and dismissal of the charge for possession of drug paraphernalia. After engaging Russell in a plea colloquy, the circuit court accepted his plea and, consistent with the State's recommendation, sentenced him to eighteen months' probation. It is undisputed that no preliminary hearing was held nor was an information filed.

¶3 Russell's subsequent motion to vacate the judgment of conviction and dismiss the case was denied. This appeal followed.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

## ANALYSIS

### A. SUBJECT MATTER JURISDICTION

¶4 Russell argues that the State's failure to file an information deprived the circuit court of subject matter jurisdiction. The question whether a circuit court lacks subject matter jurisdiction is a legal issue that this court reviews independently. See *State v. Webster*, 196 Wis. 2d 308, 538 N.W.2d 810 (Ct. App. 1995).

¶5 Citing *State v. Woehrer*, 83 Wis. 2d 696, 266 N.W.2d 366 (1978) and *State v. May*, 100 Wis. 2d 9, 301 N.W.2d 458 (Ct. App. 1980), Russell argues that the filing of an information is a jurisdictional requirement in a felony case. Thus, he contends that failure to file an information deprived the court of subject matter jurisdiction. Although *May* and *Woehrer* appear to stand for the proposition that WIS. STAT. § 971.01(2) mandates the filing of an information, the facts of these cases are distinguishable from the present case.<sup>2</sup>

¶6 In *May*, the defendant moved to dismiss the charges against him because the information had not been served within thirty days of the preliminary hearing. *May*, 100 Wis. 2d at 10. Because the issue in *May* dealt with service, as opposed to filing of an information, the *May* court's observation that "the filing of the information is a jurisdictional requirement" is mere dicta.

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<sup>2</sup> WISCONSIN STAT. § 971.01 provides, in relevant part, that "[t]he information shall be filed with the clerk within 30 days after the completion of the preliminary examination or waiver thereof. ... Failure to file the information within such time shall entitle the defendant to have the action dismissed without prejudice."

¶7 Turning to *Woehrer*, the defendant there, as here, challenged his conviction on the basis of the State’s failure to file an information. *Woehrer*, 83 Wis. 2d at 697. Unlike the present case, however, the *Woehrer* defendant pled not guilty and prior to his trial, objected to the lack of an information. The *Woehrer* court, in fact, noted: “There is no claim that the defendant waived such filing by pleading guilty or nolo contendere or by going to trial on the merits. On the contrary, the defendant properly objected to the failure to file the information.” *Woehrer*, 83 Wis. 2d at 699. Thus, the *Woehrer* court seemingly contemplated the possibility that the filing of an information may be waived.

¶8 In any event, this court has recognized that “[c]riminal subject ... matter jurisdiction is the ‘power of the court to inquire into the charged crime, to apply the applicable law and to declare the punishment.’” *State v. Webster*, 196 Wis. 2d 308, 538 N.W.2d 810 (Ct. App. 1995) (citing *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994)). To that end, the circuit court’s subject matter jurisdiction attaches “upon the filing of the criminal complaint” unless the complaint does not charge an offense known to law. *Id.* at 317. Further, “once criminal subject matter jurisdiction attaches, it continues until a final disposition of the case.” *Id.* Because Russell does not contend that the complaint in this case did not charge an offense known to law, we conclude that criminal subject matter jurisdiction attached upon the filing of the criminal complaint and continued until the case’s final disposition.

#### B. DEFECT IN A MATTER OF FORM

¶9 Here, the circuit court, in denying Russell’s motion for postconviction relief, concluded that the lack of an information was “a mere defect in a matter of form which clearly did not prejudice the defendant and, by operation

of [WIS. STAT. § 971.26], does not invalidate the judgment.”<sup>3</sup> Russell, citing *Woehrer*, 83 Wis. 2d at 699, argues that “[t]he lack of an information ... is not a matter of form.” The *Woehrer* court’s statement in full, however, provided: “The lack of an information *in this case* is not a matter of form.” *Id.* (Emphasis added.) Because the facts of *Woehrer* are distinguishable from the present case, Russell’s argument is not persuasive.<sup>4</sup>

¶10 The circuit court found that Russell knew the exact nature of the charge against him and insisted on entering a plea at his initial appearance. Under these circumstances, the circuit court properly concluded that the lack of an information was a mere defect of form that did not prejudice Russell and therefore did not invalidate the judgment.

*By the Court.*—Judgment and order affirmed.

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

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<sup>3</sup> WISCONSIN STAT. § 971.26 provides that “[n]o indictment, information, complaint or warrant shall be invalid nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant.”

<sup>4</sup> Russell also argues that the circuit court erred by additionally concluding that the State was precluded from filing an information because Russell neither had a preliminary hearing nor waived the right to a preliminary hearing. The State concedes that because a guilty plea constitutes a waiver of the right to a preliminary hearing, see *State v. Strickland*, 27 Wis. 2d 623, 633, 135 N.W.2d 295 (1965), it was not precluded from filing an information. In any event, because the circuit court properly concluded that the lack of an information was a defect in a manner of form that did not prejudice Russell, we need not address the circuit court’s alternate grounds for denying Russell’s postconviction motion. See *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (only dispositive issues need be addressed).

