

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 16, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 94-2051-CR
94-2052-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RUSSELL H. FARR,

Defendant-Appellant.

APPEAL from judgments and orders of the circuit court for Rock County: J. RICHARD LONG. *Affirmed.*

Before Eich, C.J., Dykman and Vergeront, JJ.

PER CURIAM. Russell H. Farr appeals from judgments convicting him of armed robbery, and as a party to the crime of armed robbery. He also appeals from orders denying his postconviction motions for relief. He argues that his sentence and judgments are void and that the trial court failed to properly exercise its sentencing discretion. We reject Farr's arguments and affirm.

In exchange for various concessions, Farr pleaded guilty to both charges. In sentencing Farr, the trial court referred to both charges as armed robberies, omitting the fact that Farr pleaded as a party to the crime to one of them. After hearing the parties' joint recommendation for a fifteen-year prison term with a consecutive ten-year probation term, the court indicated that a ten-year rather than a fifteen-year prison term "perhaps might be a proper sentence." The court then asked the State to respond. After hearing that response, the court imposed the recommended sentences. Two judgments of conviction for armed robbery were subsequently entered. The one in which the prison term was imposed was then amended to indicate that Farr was convicted as a party to the crime.

Farr first argues that his prison sentence is void because he was convicted for one crime, party to the crime of armed robbery, and sentenced for another, that being armed robbery. We disagree. The crime is actually the same. Being a party to the crime is simply a different way of committing it. *See* § 939.05, STATS. (whoever is concerned in the commission of a crime is a principal whether that person directly commits the crime or is a party to it). In any event, "[n]o ... judgment or other proceedings [shall] be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant." Section 971.26, STATS. The court's failure at sentencing to state the precise means by which Farr committed the crime was simply a nonprejudicial matter of form.

Farr next argues that the amended judgment was void because it did not conform to the trial court's pronouncement at sentencing. Again, the discrepancy had no prejudicial effect on Farr and we disregard it as a matter of form. We also reject his contention that the amended judgment somehow constituted a resentencing.

Finally, Farr argues that the trial court improperly delegated its discretion by asking the prosecution to respond to the proposed ten-year sentence. His position is meritless. Plainly, the court had not yet finally determined the proper sentence; it was merely affording the State an additional opportunity to state its position on a proposed sentence. Farr received the same opportunity to fully state his position, and ultimately received the sentence he requested.

By the Court.—Judgments and orders affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.