

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 21, 1996

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.

No. 95-1297

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LARRY J. SPROSTY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Crawford County: MICHAEL KIRCHMAN, Judge. *Affirmed.*

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

PER CURIAM. Larry J. Sprosty appeals from a judgment committing him as a sexual predator under chapter 980, STATS. Because we

reject Sprosty's argument that the trial court erred in failing to grant his substitution request, we affirm.¹

In 1990, Sprosty was found guilty and sentenced to five years' imprisonment for various sex crimes. Two days before his scheduled release, the State filed a timely chapter 980, STATS., petition alleging that Sprosty was a sexually violent person. The day after the petition was filed, Sprosty moved to substitute the judge under various statutes.²

As the State concedes, the circuit court incorrectly held that Sprosty had no right of substitution under chapter 980, STATS. However, if the trial court came to the right result, but for the wrong reason, we will affirm. *State v. Holt*, 128 Wis.2d 110, 124-25, 382 N.W.2d 679, 687 (Ct. App. 1985).

We hold that Sprosty waived his right to substitution by concurrently filing various motions addressed to the merits. Under substitution statutes a defendant may request a new judge only "before making any motion." Asking for relief by submitting motions "accede[s] to the trial jurisdiction of the assigned judge." *State ex rel. Warrington v. Circuit Court*, 100 Wis.2d 726, 730-31, 303 N.W.2d 590, 592 (1981).

By the Court.—Judgment affirmed.

This opinion will not be published.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

¹ Sprosty also argues that the trial court erred in failing to dismiss for the State's failure to allege the required criteria for a chapter 980, STATS., petition. Although Sprosty obtained a favorable federal district court habeas corpus petition to that effect at the time his brief was filed, the Seventh Circuit Court of Appeals later overturned that favorable ruling. After being so informed by the State, Sprosty withdrew his appeal on this issue.

² Apparently unsure whether a sexual predator petition was civil or criminal in nature, Sprosty relied on §§ 971.20, 980.05(1m), 801.01(2) as well as 801.58, STATS.