

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 29, 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. 95-1967-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES A. SMITH,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. James A. Smith appeals *pro se* from a judgment of conviction, after a jury trial, for armed robbery. He essentially raises three issues for our review – whether the trial court lacked personal jurisdiction over him because of a lack of an arraignment and formal plea hearing; whether his rights were violated when “he was forced to go to trial without counsel”; and

whether his statutory right to a speedy trial was violated. We reject his arguments and affirm.¹

I. BACKGROUND.

Smith was charged with the armed robbery of a seventy-four-year-old tavern owner. An information charging him with the offense was filed, but a formal plea was never taken by the trial court. The State Public Defender appointed two successive attorneys to represent Smith, but Smith chose to dismiss both attorneys. Prior to Smith's filing of his motion to dismiss his second appointed counsel, the State Public Defender's Office advised him that the office would not appoint a third counsel. After the trial court conducted a review of Smith's education, experience, and ability to represent himself, Smith admitted that while he preferred to have another counsel appointed, he would represent himself at trial. After a three-day trial, a jury convicted Smith and the trial court sentenced him to fifteen years incarceration.

¹ Smith previously filed an appeal in case No. 95-0646-CR, with appointed appellate counsel. On May 23, 1995, this court issued an order relieving Smith's appointed counsel from any further representation and granting Smith's request to voluntarily dismiss that appeal. We allowed Smith to file a new notice of appeal *pro se*, which is the genesis of the case before us.

II. ANALYSIS.

Smith first argues that he did not receive an arraignment or formal plea hearing, and that this omission deprived the circuit court of personal jurisdiction over him. The State concedes that Smith never received either an arraignment or a formal plea hearing; however, it argues that Smith waived this error. We agree.

The failure to conduct an arraignment and formally take a defendant's plea to an information will not jeopardize a conviction if the defendant fails to object to these failures and if the lack of an arraignment and plea-taking did not prejudice the defendant. See *Hack v. State*, 141 Wis. 346, 349, 124 N.W. 492, 493 (1910); see also *Bies v. State*, 53 Wis.2d 322, 325, 193 N.W.2d 46, 48 (1972). Hence, "a defect in the arraignment procedure is waived by silence, unless it shall appear that the error complained of has affected the substantial rights of the party." *State v. Martinez*, 198 Wis.2d 222, 235, 542 N.W.2d 215, 221 (Ct. App. 1995) (citation omitted). Even given the conceded procedural error here, Smith never raised this issue until the second day of trial and he has not shown any prejudice. Accordingly, we conclude the issue was waived. *Id.* at 235-36, 542 N.W.2d at 221.

Smith next argues that he was deprived of the right to counsel. His argument is specious. The State Public Defender appointed two successive attorneys to represent Smith. Smith sought both their dismissals. Before the second attorney was dismissed, the State Public Defender informed Smith that the office would not appoint a third counsel. Smith elected to represent himself at trial and waived his right to counsel. See *State v. Woods*, 144 Wis.2d 710, 715-16, 424 N.W.2d 730, 732 (Ct. App. 1988) (holding defendant's decision to proceed *pro se* was made not by express consent but by operation of law because "the defendant has deemed by his own actions that the case proceed accordingly.").

Finally, Smith argues that he did not receive a speedy trial within the statutory time limit. Pursuant to § 971.10(2)(a), STATS., a felony trial is to commence within ninety days of a demand for speedy trial. Smith demanded a speedy trial on March 14, 1994, at his preliminary hearing. The ninetieth day

thereafter was June 12, 1994. Smith's trial commenced on May 31, 1994. There was no error.

By the Court. – Judgment affirmed.

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