COURT OF APPEALS
DECISION
DATED AND RELEASED

October 17, 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. 95-3018

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

FRANKLIN G. VAN WORMER,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed*.

Before Eich, C.J., Vergeront, J., and Robert D. Sundby, Reserve Judge.

PER CURIAM. Franklin G. Van Wormer appeals from an order denying a motion, brought under § 806.07, STATS., to vacate his judgment of conviction. The issues are whether Van Wormer is entitled to relief because the prosecutor allegedly failed to comply with procedural requirements for filing the complaint, and because Van Wormer failed to receive a probable cause

determination within forty-eight hours of his arrest. These issues have been waived. We therefore affirm.

Defenses and objections based on defects in commencing a criminal proceeding, or regarding the sufficiency of the complaint, shall be raised before trial or are deemed waived. Section 971.31(2), STATS. Van Wormer raises the issues of the alleged defects in the complaint for the first time in this, his second appeal.

He also argues for the first time that he received an untimely preliminary hearing. After Van Wormer's conviction he brought a motion for postconviction relief under RULE 809.30, STATS. When it was denied, we heard his appeal from the conviction and from the order denying relief. The failure to raise an issue on an initial motion for postconviction relief, or on direct appeal, precludes one from raising it in a later proceeding without sufficient reason. ***State v. Escalona-Naranjo***, 185 Wis.2d 168, 185, 517 N.W.2d 157, 164 (1994).

In any event, Van Wormer's preliminary hearing was not unconstitutionally delayed. The forty-eight-hour rule set forth in ***County of Riverside v. McLaughlin***, 500 U.S. 44, 56 (1991), does not apply to those, like Van Wormer, who were already in the State's lawful custody for other reasons when the proceeding commenced. ***State v. Harris***, 174 Wis.2d 367, 377, 497 N.W.2d 742, 746 (1993).

By the Court.—Order affirmed.

This opinion will not be published.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