



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 27, 2017

To:

Hon. Dennis R. Cimpl
Circuit Court Judge
Children's Court Center
10201 W. Watertown Plank Rd.
Wauwatosa, WI 53226

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Jeffrey J. Kassel
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707-7857

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Benny Odell Choice 454160
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

You are hereby notified that the Court has entered the following opinion and order:

2016AP245-CR State of Wisconsin v. Benny Odell Choice (L.C. # 2005CF2227)

Before Brennan, P.J., Brash and Dugan, JJ.

Benny Odell Choice, *pro se*, appeals from an order of the circuit court that denied his motion to vacate his judgment of conviction. Choice claims that the circuit court lacked personal and subject matter jurisdiction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ The order is summarily affirmed.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In 2005, Choice pled guilty to two counts of armed robbery with the threat of force, one as party to a crime; one count of endangering safety by use of a dangerous weapon; and one count of robbery with threat of force. In 2007, he was allowed to withdraw those pleas and the judgment of conviction was vacated, though Choice then re-entered guilty pleas to the same charges. Choice was sentenced to a total of thirty-eight years and nine months' imprisonment. He filed a postconviction motion, which was denied. This court affirmed in 2009, *see State v. Choice*, No. 2008AP798-CR, unpublished slip op. (WI App Mar. 31, 2009), and the supreme court denied a petition for review.

In 2016, Choice filed a “motion pursuant to [WIS. STAT. §] 806.07(1)(D) to vacate the courts void judgment for lack of subject matter jurisdiction.” Choice claimed the State failed “to effect service of process ... within 48 hours after the warrantless arrest of Defendant.” The circuit court denied the motion, explaining that no statute requires a criminal complaint to be filed within forty-eight hours of a warrantless arrest. To the extent Choice was claiming a violation of *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991), the circuit court explained that such a violation was not a jurisdictional defect. Choice appeals.

On appeal, Choice complains: (1) he was unlawfully arrested without a warrant or summons, so there was no personal jurisdiction over him; (2) the criminal complaint was defective because it was not timely filed within forty-eight hours of his arrest,² so there was no personal or subject matter jurisdiction; (3) he was not presented to a judge within forty-eight

² Choice was arrested on April 14, 2005; the complaint was filed on April 20, 2005.

hours of his warrantless arrest, contrary to *Riverside*, depriving the court of subject matter jurisdiction; and (4) he did not waive personal jurisdiction challenges with his plea.

We reject Choice's personal jurisdiction challenges. He made no such claims in his motion, so the issues are not properly preserved for appeal. See *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. Further, challenges to personal jurisdiction are indeed waived by a guilty plea. See *State v. West*, 214 Wis. 2d 468, 483, 571 N.W.2d 196 (Ct. App. 1997).

Choice's personal jurisdiction claims also fail on the merits. Arrests for felonies may be made without a warrant. See *Pillsbury v. State*, 31 Wis. 2d 87, 91, 142 N.W.2d 187 (1966). A separate summons or warrant is not necessary for acquiring personal jurisdiction over an individual already in custody. See *State v. Jennings*, 2003 WI 10, ¶23, 259 Wis. 2d 523, 657 N.W.2d 393; *Pillsbury*, 31 Wis. 2d at 92; cf. WIS. STAT. § 968.02(2) (2005-06) ("After a complaint has been issued, it shall be filed with a judge and either a warrant or summons shall be issued[.]"). This is because personal jurisdiction does not depend on the warrant but on the "accused's physical presence before the [court]." See *Pillsbury*, 31 Wis. 2d at 92. Further, there is no specific timeline for filing the criminal complaint except the statute of limitations. See *Jennings*, 259 Wis. 2d 523, ¶15; but cf. WIS. STAT. § 968.04(1)(a) (2005-06) ("When an accused has been arrested without a warrant and is in custody or appears voluntarily before a judge, no warrant shall be issued and the complaint shall be filed forthwith with a judge.").

Choice also claims that the failure to bring him before a judge for a probable cause determination within forty-eight hours of his warrantless arrest, as required by *Riverside*, deprived the circuit court of subject matter jurisdiction. Choice is incorrect.

“Criminal 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.” *West*, 214 Wis. 2d at 481. Subject matter jurisdiction is derived from the Wisconsin Constitution and statutes. *See id.*; *see also* WIS. CONST. art. VII, § 8 & WIS. STAT. § 753.03. “A circuit court lacks criminal subject matter jurisdiction only where the complaint does not charge an offense known to law.” *West*, 214 Wis. 2d at 482. *Riverside* requires only that a probable cause determination be made within forty-eight hours of a warrantless arrest. *See State v. Koch*, 175 Wis. 2d 684, 696, 499 N.W.2d 152 (1993) (adopting *Riverside* in Wisconsin). A *Riverside* violation thus is not a jurisdictional defect. *See State v. Golden*, 185 Wis. 2d 763, 769, 519 N.W.2d 659 (Ct. App. 1994).

Therefore,

IT IS ORDERED that the order is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals