COURT OF APPEALS
DECISION
DATED AND FILED

September 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-1669-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GLORIA MACK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waushara County: JOSEPH E. SCHULTZ, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. Gloria Mack appeals from a judgment of conviction on one felony count of false swearing, contrary to § 946.32(1)(a), STATS. She raises several issues. We affirm.

The complaint in this case was filed by an assistant attorney general on behalf of the State against several defendants, alleging various crimes related to the medical assistance program. The count against Gloria Mack alleged that she signed an affidavit containing false statements.

Mack argues that the trial court had no jurisdiction because the complaint was not approved by the district attorney as provided in § 968.02, STATS. We reject this argument because the Department of Justice is authorized to prosecute violations of criminal laws affecting medical assistance, and when doing so it has all the powers of a district attorney. *See* § 49.495, STATS.

Mack argues that the affidavit in question was seized from her residence during an illegal search, and therefore should not have been admitted as evidence. Mack filed a motion for the return of the affidavit under § 968.20, STATS., but it does not appear that she moved to suppress the evidence under § 971.31, STATS. Failure to file such a motion waives the issue. *See* § 971.31(2). Therefore, we do not address it further.

Mack argues that the trial judge, Judge Schultz, should have been disqualified because Gloria Mack's husband, Richard Mack, filed a cross-claim against him in a separate action in 1994. This is not a ground for disqualification under § 757.19(2)(a)-(f), STATS. Under the remaining ground for disqualification, § 757.19(2)(g), if the judge has made a determination that disqualification is not necessary, the decision can be overturned only with a factual record sufficient to show that the judge's subjective determination about his own state of mind was erroneous. *See* ***State v. American TV & Appliance***, 151 Wis.2d 175, 186, 443 N.W.2d 662, 666 (1989). No such facts have been presented here.

Mack argues that she was denied her right to counsel. Although Mack requested the appointment of counsel, she refused to provide the information required by the office of the State Public Defender to determine her eligibility. The circuit court declined to appoint counsel under its own authority unless Mack first sought counsel from the public defender. A defendant may forfeit the right to counsel by disruptive or manipulative behavior. *See* ***State v. Cummings***, 199 Wis.2d 721, 756-57, 546 N.W.2d 406, 420 (1996). Mack did so in this case by refusing to cooperate with the public defender.

Mack argues that her case was improperly joined with those of Richard Mack, John Mack, and Support Systems International, Inc. The standards for joinder are provided in § 971.12, STATS. The charges against all the defendants related to billing the medical assistance program for services not rendered, or to false swearing in related matters. We are satisfied that joinder was appropriate under the applicable standards.

Mack argues that the evidence at the preliminary hearing was insufficient. This is not an issue on which relief may be granted on appeal from a conviction after trial. *See* ***State v. Webb***, 160 Wis.2d 622, 636, 467 N.W.2d 108, 114 (1991). The proper remedy is by petition for leave to appeal from the bindover order. *See* ***id.*** We do not address this issue further.

Mack also argues that the evidence at trial was insufficient. Contained within this argument are numerous other arguments related to admissibility of evidence, correctness of jury instructions, and other matters. Without attempting to describe and respond to the various arguments in detail here, we have reviewed these arguments and concluded that the evidence was

sufficient and there is no merit to the other arguments contained in this section of the brief.

By the Court.—Judgment affirmed.

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