COURT OF APPEALS
DECISION
DATED AND FILED

October 13, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3180

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JONATHAN P. COLE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL J. BARRON, Judge. *Affirmed.*

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

PER CURIAM. Jonathan Cole, acting *pro se*, appeals from an order denying his postconviction motion in which he argues that his sentence should be vacated and he should be released from custody. The basis for his motion is his contention that the trial court never obtained subject-matter jurisdiction over him due to the numerous procedural irregularities occurring in the commencement of

his criminal proceedings. Further, he asserts that his trial attorney was ineffective for failing to detect these procedural problems and that this failure was prejudicial to him as it prevented him from entering an intelligent and voluntary guilty plea. We affirm because we conclude there were no procedural irregularities; thus, trial counsel could not be ineffective for failing to detect them.

I. BACKGROUND.

Cole pled guilty to three counts of armed robbery; one count of attempted armed robbery, and one count of operating a motor vehicle without the owner's consent, in June 1988. The charges against him stem from a series of crimes which he committed over a five-week period in late 1987. He was sentenced to twelve years on each of the three armed robbery charges, ten years on the remaining attempted armed robbery charge and two years on the operating a vehicle without the owner's consent, all to be served concurrently. On October 6, 1997, Cole brought a motion pursuant to § 974.06, STATS., asking the court to vacate his sentence and discharge him from custody. His motion was denied in a written decision and this appeal follows.

II. ANALYSIS.

Cole claims there were numerous procedural errors. So grave were these irregularities that, in Cole's opinion, the trial court never obtained jurisdiction over him. Thus, he seeks to have the sentence vacated and to be released from custody. These procedural problems include: (1) the judge at the initial appearance allegedly failing, contrary to § 968.02(2), STATS., to endorse upon the criminal complaint that probable cause had been found; (2) the trial judge failing to either sign a warrant or a summons for his arrest, allegedly contrary to § 968.04(1); (3) the trial court failing to instruct the clerk of courts to file the

complaint pursuant to § 968.03(1); (4) the trial court failing to discern that the complaint was insufficient because it lacked sworn affidavits of the witnesses; and (5) a violation of Cole's constitutional right to be indicted by a grand jury. Additionally, Cole claims his trial counsel was ineffective for failing to note these deficiencies in the proceedings and this ineffectiveness resulted in prejudice to Cole because he could not intelligently and knowingly have entered guilty pleas without this information. Cole further argues that the trial court erred in refusing to hold an evidentiary hearing concerning his allegations that his trial attorney was ineffective. Finally, Cole claims that the statutes governing the filing of complaints are void for vagueness. We find no merit to any of Cole's contentions. Accordingly, we affirm.

Cole's arguments concerning the claimed irregularities in his criminal proceedings must be denied for several reasons. First, our review of the underlying proceedings reveals there were no irregularities, and Cole's interpretation of the statutes is incorrect. Second, Cole effectively waived his right to challenge any defects or defenses to the proceedings, including his claimed constitutional error by entering his valid pleas of guilty.

Cole's first claim of error concerns § 968.03(1).[1] Cole argues that the trial court was obligated to endorse its finding of probable cause on the complaint. A reading of the statute reveals that the statute only requires the trial

[1] Section 968.03(1), STATS., provides:

> **Dismissal or withdrawal of complaints. (1)** If the judge does not find probable cause to believe that an offense has been committed or that the accused has committed it, the judge shall indorse such finding on the complaint and file the complaint with the clerk.

court to endorse the complaint when probable cause is not found. The judgment roll entry clearly states that "Court reviewed complaint and finds probable cause to hold defendant for further proceedings." Consequently, the trial court did not err.

Next, Cole relies on § 968.04(1), STATS.,[2] for his belief that every complaint must be accompanied by either a warrant or a summons. A reading of § 968.04(1)(a), however, confirms that not every complaint will require a warrant or a summons. It reads: "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." Section 968.04(1)(a), STATS. The case record and judgment docket contains the entry "date of arrest 12-14-87," which is four days before his initial appearance in court. Consequently, there was no need for a warrant or a summons as he was in custody.

Cole next asserts that his sentence should be vacated and he should be released based upon the fact that the complaint was never filed. Again, his argument is belied by the record. First, the complaint is in the record. It would be highly unlikely to be contained in the record without having been filed. Any lingering doubt, however, is swept away by the fact that the back of the last page of the complaint contains the file stamp of the clerk of court and the date "Dec 18

[2] Section 968.04(1), STATS., provides:

> **Warrant or summons on complaint. (1)** WARRANTS. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint or after an examination under oath of the complainant or witnesses, when the judge determines that this is necessary, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the judge shall issue a warrant for the arrest of the defendant or a summons in lieu thereof. The warrant or summons shall be delivered forthwith to a law enforcement officer for service.

1987." Section 968.02(2) instructs that a complaint be filed after it is issued. As noted, the record reflects it was filed, and Cole was given a copy of the complaint and advised of its contents. Cole contends the trial court never obtained jurisdiction over him. He is incorrect because the filing of the criminal complaint also triggers criminal subject-matter jurisdiction. *See* ***State v. Aniton***, 183 Wis.2d 125, 129, 515 N.W.2d 302, 303-04 (Ct. App. 1994). Thus, the trial court had both subject-matter and personal jurisdiction over Cole.

Cole also complains that the trial court did not require sworn affidavits from the witnesses to be attached to the complaint. Cole apparently has confused the requirements of a criminal complaint with other requirements found in the statutes addressing witnesses because, as noted by the State, it is well-settled that a complaint may be based on hearsay information, as long as there is enough additional information to enable the reviewing magistrate to conclude that the sources of the information are probably truthful and reliable. *See* ***State v. Chinavare***, 185 Wis.2d 528, 534, 518 N.W.2d 772, 774 (Ct. App. 1994); ***State v. Wolske***, 143 Wis.2d 175, 187-92, 420 N.W.2d 60, 64-66 (Ct. App. 1988). Here, the complaint stated that the detective signing the complaint "bases this complaint upon his reading of reports prepared by fellow City of Milwaukee police officers and detectives which … he believes to be truthful and reliable because they are the type of reports normally made and kept in the course of department business and upon which he has relied in the past." The reports relied upon by the complaining officer recite the observations of the various victims of the crimes and the purported confession of Cole. The attesting officer was entitled to believe the statements made by Cole because they are made against his penal interest and he was also permitted to rely on the statements of the victims found in the official police reports because case law has established that victims of crimes who report

what they observed are to be considered truthful and reliable sources of information. *See* ***State v. Cheers***, 102 Wis.2d 367, 395, 306 N.W.2d 676, 689 (1981). Thus, there was ample information in the four-page, single-spaced complaint for the magistrate to conclude that the sources of the information "were probably truthful and reliable."

Cole's final claim of procedural irregularity deals with his assertion that he has a constitutional right to be indicted by a grand jury. Despite the obvious dearth of defendants in Wisconsin who can claim to have had their state prosecutions commenced by way of a grand jury indictment, Cole nonetheless argues that the lack of a grand jury indictment is fatal to his prosecution. Although Wisconsin has codified the commencement of prosecutions by grand jury in § 756.17, STATS., the procedure is rarely used. Moreover, the federal requirement of a grand jury indictment is not applicable to the states. *See* ***Hurtado v. California***, 110 U.S. 516, 537-38 (1884). The commencement of criminal felony proceedings by way of the filing of a criminal complaint and later, an information, has become the preferred method in Wisconsin. This preference is no doubt due to the fact that the latter method entitles the accused to a preliminary hearing, a public proceeding where the accused is obligated to attend, unlike grand jury proceedings which are held in secret and often without the defendant's knowledge.

In the instant case, the record reflects that Cole was present and not only articulated that he wished to waive his right to a preliminary hearing, but also that he filled out and signed a "Preliminary Hearing Questionnaire & Waiver" form. Additionally, another entry reveals that an "Information, in writing, received and filed, and copy of the Information given to the Defense." Cole was not entitled to be indicted by a grand jury as long as the alternative procedure was

followed. Here, the record supports the fact that Cole waived his right to a preliminary hearing and, after the waiver was accepted by the trial court, an information was properly filed and a copy given either to Cole or his attorney.

Equally problematic for Cole in advancing his position is the fact he failed to object to any of these perceived procedural requirements prior to his entering pleas of guilty. Cole's procedural arguments must be denied because his valid pleas of guilty waived any defects and defenses in the proceeding. "[A] guilty plea, voluntarily and understandingly made constitutes a waiver of nonjurisdictional defects and defenses including claims of violations of constitutional rights prior to the plea." ***Mack v. State***, 93 Wis.2d 287, 293, 286 N.W.2d 563, 566 (1980). All of Cole's complaints based upon procedural defects fall within this category.

Cole's second claim is that his attorney was ineffective for not detecting what he perceives as the procedural defects in his criminal action. Since we have concluded that there were no defects, his charge of attorney ineffectiveness is meritless. As a result, the trial court did not err in failing to hold an evidentiary hearing.

Finally, Cole has made another argument in this appeal that the statutes governing the filing of complaints are void for vagueness. He has, however, failed to present any argument on this issue and thus, it is undeveloped. We will not address it. *See* ***Reimann Assoc., Inc. v. R/A Adver., Inc.***, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (issues not briefed or argued on appeal are deemed abandoned). Cole has also requested that this court grant a writ of mandamus. That matter is not appropriately before this court and will not be addressed.

By the Court.—Order affirmed.

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