COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0984-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

COREY A. KELLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Corey Keller appeals a judgment convicting him of five counts of armed robbery and one count of arson. He also appeals an order denying his motion to withdraw his guilty pleas. He argues that the prosecutor violated § 971.09, STATS., when he amended the information to include a "habitual criminality" penalty enhancer on crimes committed in other counties without the consent of the other counties' district attorneys. He also argues that

his trial counsel was ineffective for his failure to object to the amended information. We reject these arguments and affirm the judgment and order.

Keller was charged with numerous felonies from several counties. He indicated a desire to consolidate the cases and accept a plea bargain. The Eau Claire County district attorney secured the consent of the Chippewa County and Trempealeau County district attorneys to prosecute the cases that arose in those counties. The complaints in the other counties did not include the habitual criminality allegation. Keller argues that the Eau Claire County district attorney was not authorized to add the habitual criminality allegations to the information and, therefore, his guilty pleas should be vacated or his sentences should be reduced.

Keller's guilty pleas constitute a waiver of his right to challenge the parts of the information charging habitual criminality. A guilty plea, when knowingly and voluntarily made, waives all nonjurisdictional defects and defenses. *See* ***State v. Dietzen***, 164 Wis.2d 205, 210, 474 N.W.2d 753, 755 (Ct. App. 1991). Before accepting the guilty pleas, the trial court ascertained that Keller understood that he faced additional penalties on each count because of the repeater allegations. Keller assured the trial court that he had read the paragraph setting forth the repeater allegation, and he admitted that he had been convicted of other crimes described in the complaint.

The prosecutor's decision to include habitual offender allegations in the charges consolidated from other counties does not constitute a jurisdictional defect. Failure to follow all of the provisions of § 971.09, STATS., does not deprive the court of jurisdiction to accept a plea. *See* ***Peterson v. State***, 54 Wis.2d 370, 378, 195 N.W.2d 837, 843 (1972). The important consideration is whether

the defendant and the prosecutors in the other counties consent to the consolidation. *See* ***State v. Dillon***, 187 Wis.2d 39, 48-49, 522 N.W.2d 530, 534 (Ct. App. 1994). The rule set out in ***Dillon*** is designed to protect prosecutors from having their authority usurped by the prosecutor from another county, which did not occur in this case. A jurisdictional defect is not implied every time the precise methodology set out in § 971.09 is not followed. Therefore, Keller's plea waived this nonjurisdictional defect.

Even if the issue had been properly preserved, we conclude there was no reversible error. The trial court found that the prosecutors from Chippewa and Trempealeau County were both present in court. Their ratification of the habitual criminality allegations satisfies the requirements of § 971.09, STATS. The charges contained in the complaints filed in other counties are irrelevant. All that is required is the prosecutor's consent to the charge ultimately contained in the information.

Keller has not established any prejudice from his counsel's failure to object to the information. Had counsel objected, the prosecutors from the other counties could have simply executed written consents. The objection would not have benefited Keller in any way. Keller concedes that striking the repeater allegations was unlikely to change the sentence actually imposed. Because Keller has established no prejudice, we need not review whether his counsel's performance was deficient in any manner. *See* ***Strickland v. Washington***, 466 U.S. 668, 697 (1984).

By the Court.—Judgment and order affirmed.

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