COURT OF APPEALS
DECISION
DATED AND FILED

March 7, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1022-CR **Cir. Ct. No. 2003CF1397**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRANCE LOVELL EDWARDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed*.

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

¶1 WEDEMEYER, P.J. Terrance Lovell Edwards, *pro se*, appeals from a judgment of conviction after he plead guilty to the charge of armed robbery

contrary to WIS. STAT. § 943.32(2) (2003-04)[1] and an order denying motions for postconviction relief. Edwards raises six instances of error, which he claims warrant vacating his conviction. Because all of Edwards's claims lack merit, we affirm.

BACKGROUND

¶2 We summarize and paraphrase the facts that were stipulated to by Edwards and the State. On February 19, 2003, at 10:00 a.m. at a branch of the M&I Bank located at 2120 West Wisconsin Avenue in the City and County of Milwaukee, Edwards approached the teller window of employee, Larita Smith. Edwards handed her a note. The note stated: "I have a gun, don't be stupid, give me all of the one hundreds, fifties and twenties." Smith counted out seven one hundred dollar bills and gave them to Edwards. She gave him the money because she was afraid of the message in the note. She believed that Edwards was serious and that he had a weapon. Edwards then left the bank with the money. A security guard unsuccessfully tried to stop Edwards as he left the bank.

¶3 A short time later after a chase, Edwards was apprehended by police officers. As he was stopped, police officers observed him drop the one hundred dollar bills. The police brought Edwards back to the bank where he was identified by employees of the bank. The police recovered the threatening note, which was later determined to contain Edwards's fingerprints. He later admitted committing the offense at the M&I Bank. After his plea of guilty, Edwards, on four different occasions, brought motions claiming error. They were all denied and now

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Edwards appeals. Additional historical facts will be set forth as we examine the various claims of error raised by Edwards.

ANALYSIS

¶4 In reviewing Edwards's challenges to his conviction, we shall examine them in the chronological order normally occurring in the initiation, prosecution, and conduct of a criminal proceeding.

A. Jurisdiction.

¶5 Edwards first claims, in essence, that the trial court lacked jurisdiction over his person because the complaint issued against him was invalid. We deem the issue raised by Edwards to be one of law. It is fundamental to our Fourth Amendment jurisprudence that "a police officer may arrest without [a] warrant one believed by the officer, upon reasonable cause, to have been guilty of a felony …." ***Carroll v. United States***, 267 U.S. 132, 156 (1925). Our supreme court has declared that "a complaint supported by probable cause serves as 'the jurisdictional requirement for holding a defendant for a preliminary examination or other proceedings.'" ***State ex rel. Zdanczewicz v. Snyder***, 131 Wis. 2d 147, 151-52, 388 N.W.2d 612 (1986) (citation omitted). Subsequently, the court ruled "the existence of a valid complaint supported by probable cause defeated any claim by the defendant that the circuit court lost personal jurisdiction over him due to an illegal arrest." ***State v. Moats***, 156 Wis. 2d 74, 89-90, 457 N.W.2d 299 (1990).

¶6 A criminal complaint is deemed issued when, by a written endorsement, it is approved for filing by a district attorney or any of his or her deputies or assistants. WIS. STAT. §§ 968.02(1) and 967.03. WISCONSIN STAT.

§ 971.31(6) provides that if a case is dismissed because of a defect in the criminal complaint, the court may order that the defendant be held in custody for not more than seventy-two hours pending the issuance or filing of a new complaint.

¶7 As indicated above, Edwards was apprehended within minutes of the robbery in close proximity to the bank. He matched the physical description of the bank robber and was found to have in his control the same denomination of bills that the robber took from the bank.

¶8 The record reflects that although the original complaint was dismissed because of a defect, a new complaint was issued one day later, satisfying the calls of WIS. STAT. § 971.31(6). The reissued complaint set forth the charges against Edwards, and why the investigation was focused upon Edwards. The complaint was properly dated and signed by the complaining witness and an assistant district attorney. Based on the foregoing, we conclude that the trial court had personal jurisdiction over Edwards.

B. Preliminary Examination.

¶9 Second, Edwards claims he was denied his statutory right to a timely preliminary hearing. We are not persuaded.

STANDARD OF REVIEW AND APPLICABLE LAW

¶10 "There is no federal or state constitutional right to a preliminary hearing in Wisconsin." ***State v. Gillespie***, 2005 WI App 35, ¶4, 278 Wis. 2d 630, 693 N.W.2d 320. "[T]he right to a preliminary examination is solely a statutory right." ***State v. Dunn***, 121 Wis. 2d 389, 394, 359 N.W.2d 151 (1984). WISCONSIN STAT. § 970.03(2) provides:

> The preliminary examination shall be commenced within 20 days after the initial appearance of the defendant if the defendant has been released from custody or within 10 days if the defendant is in custody and bail has been fixed in excess of $500. On stipulation of the parties or on motion and for cause, the court may extend such time.

¶11 Failure to hold a preliminary hearing within the statutory time limits results in a loss of personal jurisdiction. Because the right to a preliminary hearing is solely a statutory right, the statutory scheme must govern. If a defendant, while in custody, pursues a procedure that subverts one of the primary purposes of WIS. STAT. § 970.03(2), he or she will not be heard to claim foul. *See* ***State v. Horton***, 151 Wis. 2d 250, 256, 445 N.W.2d 46 (Ct. App. 1989).

¶12 Of further important policy concern in our state is the necessity to assure that every defendant in a criminal proceeding is competent throughout. The court shall proceed with a competency proceeding "whenever there is reason to doubt a defendant's competency to proceed." WIS. STAT. § 971.14(1)(a). Once such doubt exists, the court is required to appoint one or more examiners to perform a competency examination. WIS. STAT. § 971.14(2).

¶13 On March 7, 2003, at Edwards's initial appearance, his counsel requested a competency evaluation. As a result, the proceedings were suspended and a doctor's examination report was ordered. Once the exam was completed, counsel for Edwards challenged the conclusions of the report and requested a hearing. On April 8, 2003, after a hearing, the court found Edwards competent to proceed. The court then set a preliminary hearing at the earliest possible date, April 22, 2003. Edward's counsel then withdrew, which caused further delay to appoint new counsel. Finally, the court scheduled a preliminary hearing on May 8, 2003. When Edwards appeared for the hearing, he waived his right to have it held.

¶14 There are two reasons Edwards was not denied his right to a timely preliminary hearing. First, he needed to have his competency tested, which is not in the scheme of WIS. STAT. § 970.03(2). Once that occurred, there is no mandatory date upon which a preliminary hearing must be held. Second, he waived his right to the preliminary hearing the very day it was to occur after the competency determination and the changes of counsel had delayed it. "[W]hen a defendant waives a preliminary hearing, he or she waives any inquiry into the offense charged in the complaint …." ***State v. Michels***, 141 Wis. 2d 81, 89, 414 N.W.2d 311 (Ct. App. 1987). Thus, this claim of error fails.

C. Speedy Trial.

¶15 Third, Edwards claims he was denied his right to a speedy trial. We are not persuaded.

STANDARD OF REVIEW AND APPLICABLE LAW

¶16 The right to a speedy trial is guaranteed under the Sixth Amendment to the United States Constitution and under article I, section 7, of the Wisconsin Constitution. Under the state and federal constitutions "'the right to a speedy trial arises with the initial step of the criminal prosecution, *i.e.*, the complaint and warrant.'" ***State v. Ziegenhagen***, 73 Wis. 2d 656, 664, 245 N.W.2d 656 (1976) (quoting ***State ex rel. Fredenberg v. Bryne***, 20 Wis. 2d 504, 508, 123 N.W.2d 305 (1963)). The remedy for the denial of a speedy trial is a dismissal of the conviction with prejudice. *See* ***Strunk v. United States***, 412 U.S. 434, 439-40 (1973).

¶17 To determine whether an accused was denied his or her right to receive a speedy trial, we use the balancing test the United States Supreme Court

established in ***Barker v. Wingo***, 407 U.S. 514 (1972). In ***Day v. State***, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973), the Wisconsin Supreme Court adopted the ***Barker*** test. In ***Barker***, the Court identified four factors to be used in a speedy trial inquiry: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 407 U.S. at 530. ***Barker*** requires that we first determine whether the length of delay is presumptively prejudicial. ***Id.*** If it is, then we must balance the four ***Barker*** factors under the totality of the circumstances. ***Id.*** at 530-31. If it is not presumptively prejudicial, there was no violation of the speedy trial right and we need not proceed to the balancing of the four factors. ***Id.*** at 530.

¶18 The United States Supreme Court has noted that: "Depending on the nature of the charges, the lower courts have generally found post-accusation delay 'presumptively prejudicial' at least as it approaches one year." ***Doggett v. United States***, 505 U.S. 647, 652 n.1 (1992) (citations omitted). Our Wisconsin Supreme Court has similarly determined that a twelve-month delay between a preliminary exam and trial was presumptively prejudicial. *See* ***Green v. State***, 75 Wis. 2d 631, 636, 250 N.W.2d 305 (1977).

¶19 The second factor, the reason for the delay, is weighted differently according to the nature of the reason for the delay. ***Barker*** informs us:

> A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

Id., 407 U.S. at 531.

¶20 The third factor is whether the defendant "uniformly pressed for the earliest possible trial date." ***United States v. Sarvis***, 523 F.2d 1177, 1182 (D.C. Cir. 1975).

¶21 The fourth factor, the prejudice to the defendant, "should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect." ***Barker***, 407 U.S. at 532. These interests include: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." ***Id.***

¶22 When reviewing speedy trial claims, we shall "accept the trial court's findings of historical fact unless they are clearly erroneous." ***State v. Williams***, 2004 WI App 56, ¶32, 270 Wis. 2d 761, 677 N.W.2d 691. "However, the application of the constitutional standards and principles to those facts presents a question of law," which we review independently. ***Id.*** We now apply these standards and principles to the record.

¶23 Police took Edwards into custody on February 19, 2003, while his jury trial did not commence until February 25, 2004. Thus, the elapsed time was 372 days. This delay we deem to be "presumably prejudicial." We therefore examine the three remaining factors.

¶24 The second factor relates to reasons for delay and to whom the delay is attributed. On March 7, 2001, when Edwards made his first appearance, his counsel moved for a competency evaluation, which was granted. The report was considered on March 21, 2003. This fourteen-day delay can be attributed to Edwards.

¶25 The doctor's report concluded that Edwards was competent to stand trial. Edwards then requested a competency hearing to challenge the report. The hearing was set for April 8, 2003. This eighteen-day delay can be attributed to Edwards.

¶26 On April 8, 2003, Edwards was found to be competent. His preliminary hearing date was set for April 22, 2003. The delay was due to the unavailability of the prosecutor and the earliest date available on the court calendar. This fourteen-day delay can be attributed to the State.

¶27 On April 22, 2003, the date for the preliminary hearing, Edwards's first counsel withdrew as counsel because of irreconcilable differences with Edwards. A second counsel was appointed and a new date was set for May 8, 2003. On that date, Edwards waived his right to a preliminary hearing. This sixteen-day delay can be attributed to Edwards. On the same day, the court set a scheduling conference for May 20, 2003.

¶28 At the scheduling conference, the court mentioned that Edwards's prior attorney had not requested an early trial date. It was able to set a jury trial on July 21, 2003, but because Edwards was in custody for a violation of his parole, it then decided to schedule the trial on August 18, 2003. Unfortunately, Edwards's counsel was on vacation. August 25, 2003, was suggested, but counsel had a trial conflict. Being unable to find an agreeable date, the court set a pretrial conference for June 19, 2003. This delay can also be attributed to Edwards.

¶29 On June 19, 2003, the day of the pretrial conference, Edwards declared, as the result of disputes with his second attorney, he no longer desired to have him as counsel. The court then scheduled a status conference for July 9, 2003. This twenty-day delay can be attributed to Edwards.

¶30 On July 9, 2003, Edwards requested a ***Miranda-Goodchild*** hearing.[2] The hearing was set for September 5, 2003, due to the transfer of the case to another judge. On September 5, Edwards's third counsel moved to withdraw because he had been threatened by Edwards. The trial court observed that another delay was in part due to Edwards's actions. Thus, part of the sixty-two-day delay can be attributed to Edwards.

¶31 Because Edwards's third counsel withdrew his representation, another status conference was scheduled for September 22, 2003. This seventeen-day delay can be attributed to Edwards.

¶32 In the interim, a fourth counsel was appointed to represent Edwards. This development necessitated a second status conference for October 7, 2003. This delay can be attributed to Edwards.

¶33 At the October 7, 2003 status conference, the ***Miranda-Goodchild*** hearing was rescheduled for December 4, 2003. The fifty-eight-day delay was caused by the schedules of the many police officers who were required to testify. In this instance, the State can be charged with the delay, although such delay was not intentional or motivated as a device to hinder Edwards in the preparation of his defense. Edwards's fourth counsel also needed time to prepare for trial.

¶34 In the midst of the ***Miranda-Goodchild*** hearing, Edwards announced he was going to proceed *pro se*. On December 8, 2003, the day the *voir dire* of the jury panel was to begin, Edwards complained that certain evidence, which had

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966); ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

been given to his four counsels had not been turned over to him and furthermore he was concerned that he would not be tried by a jury of his peers. The court reviewed the make-up of the panel and agreed with Edwards. Edwards also requested more time to further investigate and prepare his case. The earliest possible date on the court's calendar was February 23, 2004. This seventy-seven-day delay can be attributed largely to Edwards's refusal to allow his fourth counsel to continue to represent him.

¶35 On February 23, 2004, the day the trial was to begin, Edwards announced he no longer would proceed *pro se*, but he did not want his stand-by (fourth) counsel to represent him. The next day, Edwards asked for a fifth attorney, but the court refused the request. The *voir dire* commenced. When Edwards began to act out and cause disruption in the proceedings, the court struck the entire panel before the *voir dire* was completed. The court continued the *voir dire* the following day in the absence of Edwards who participated via video conferencing equipment. The trial began on February 25, 2004. This two-day delay can be assessed to Edwards.

¶36 In summary, and viewing the actions of Edwards through jewelers' eyes, his obstructionist comportment, when coupled with his inability to cooperate with his four counsels, decision to proceed *pro se* and need for additional time to prepare his own defense, inexorably leads us to the conclusion that most of the reasons for the year-long delay from the date of custody to the beginning of his trial can be attributed to Edwards's actions. Very little delay was the fault of the State.

¶37 The third factor concerns what attempts, if any, the accused made to obtain a speedy trial. Edwards first demanded a speedy trial on April 8, 2003, at

his contested competency hearing. His second counsel, at a scheduling conference on May 20, 2003, also requested a speedy trial, but the request was rejected because he was in custody for a parole violation. Nevertheless, the record reflects the court attempted to schedule the trial as soon as possible but attempts were thwarted because of Edwards's counsel's busy trial schedule. The next time the issue was raised was ten months later on March 15, 2004, in Edwards's motion for reconsideration of the decision and order denying postconviction relief. These first two assertions, which occurred early in this proceeding, were followed by repeated firing or forcing his counsels to withdraw representation, and changing his mind about *pro se* representation. Uniformity in the assertion of a right to a speedy trial is an important factor. ***Sarvis***, 523 F.2d at 1182. The record amply demonstrates that Edwards was not consistent in his desire to obtain a speedy trial. Therefore, the application of the third factor does not support Edwards's claim.

¶38 The fourth and last factor questions whether the delay that occurred prejudiced his defense. A brief review of the record will satisfy this inquiry. At every turn of this prosecution, the trial court was more than accommodating to the wishes of Edwards whether it involved challenging the doctor's report in the competency hearing, discharging appointed defense counsel, determining whether he was capable of handling his own defense on a *pro se* basis, providing him more time to investigate, ensuring that the jury panel consisted of a constituency of his peers, or allowing cross-examination of police officers during his ***Miranda-Goodchild*** hearing.

¶39 Edwards pled guilty after the State had called one witness and Edwards had the opportunity to cross-examine that witness. There is no indication in the record that Edwards planned to call any witnesses or introduce any exhibits, or that his efforts to do so were thwarted by any delay. On the other hand, the

State intended to call an additional twenty-one witnesses and introduce eighteen exhibits. As a result, there is no basis to argue even "potential prejudice." *See* ***United States v. Anagnostou***, 974 F.2d 939, 941-42 (11th Cir. 1992). The fourth factor played no part in Edwards's challenge.

¶40 Based on the foregoing, we reject Edwards's claims that his right to a speedy trial was violated.

D. Double Jeopardy.

¶41 Next, Edwards claims he was denied his Fifth Amendment right against being placed in jeopardy twice for the same offense. He argues that a "de facto" mistrial occurred over his objection. The circumstances giving rise to this claim are set forth as follows. On the morning of February 23, 2004, Edwards's jury trial was to begin. When he appeared in court, he announced to the court that he no longer wanted to exercise his right to proceed *pro se*, but instead wanted a new attorney to represent him. The court ruled that he already had four attorneys and that it would not appoint a fifth attorney (the fourth lawyer having already been designated to be stand-by counsel). If he wished to proceed, he would have to do so *pro se*. The matter was adjourned until the afternoon of February 24, 2004.

STANDARD OF REVIEW AND APPLICABLE LAW

¶42 It is fundamental that: "A State may not put a defendant in jeopardy twice for the same offense." ***Arizona v. Washington***, 434 U.S. 497, 503 (1978). Equally so: "'Jeopardy' means exposure to the risk of determination of guilt. It attaches when the selection of the jury has been completed and the jury is sworn." ***State v. Moeck***, 2005 WI 57, ¶34, 280 Wis. 2d 277, 695 N.W.2d 783.

¶43 "A defendant's right to have his or her trial concluded by a particular tribunal can be, under certain circumstances, subordinated to the public interest in affording the State one full and fair opportunity to present its evidence to an impartial jury." ***State v. Seefeldt***, 2003 WI 47, ¶19, 261 Wis. 2d 383, 661 N.W.2d 822. If such a need is warranted, "[t]he prosecutor must demonstrate 'manifest necessity' for any mistrial declared over the objection of the defendant." ***Washington***, 434 U.S. at 505. "'Manifest necessity' means a 'high degree' of necessity." ***Seefeldt***, 261 Wis. 2d 383, ¶19 (citations omitted).

¶44 When a trial court orders a mistrial on the basis of defendant's opening statement, the trial court's determination is entitled to special respect. ***Washington***, 434 U.S. at 510. We interpret this to mean, did the trial court exercise sound discretion in declaring a mistrial. *See* ***Moeck***, 280 Wis. 2d 277, ¶42.

¶45 The record before us shows that the first panel of twenty-eight venire persons selected to be processed for *voir dire* for final jury selection appeared before the trial court presided over by the Honorable Jeffrey Conen on February 24, 2004. Prior to the commencement of the *voir dire* in view of the unusual circumstances of Edwards not wishing to proceed *pro se* yet denied his request to have a fifth appointed counsel, the State requested an instruction from the court to explain the circumstances of the case, if Edwards attempted to tell the jury he was being forced to proceed *pro se*. The court agreed, should the occasion arise.[3]

[3] The circumstances included Edwards's jail attire, chains, electric stun belt and absence of previously appointed counsel.

¶46 When the trial court requested Edwards to introduce himself to the potential jurors, Edwards exclaimed:

> My name is Terrance Edwards. I'm here in defense of myself because I'm forced to be in here in defense of myself.
>
> As you can see, I'm objecting to this whole thing. I really don't want to go through this like this with no type of defense at all. I'm being compelled to come in here like this. I'm chained to the floor. I got a electric belt on me because I refuse to come in here without a defense.
>
> I have ineffective assistance of counsel. I'm asking for counsel. I cannot get counsel. They're compelling me to go in here pro se to let you hear one side of the story because, you know, it's impossible for you to hear two sides of the story because they're trying to force their belief and what they believe on you.

¶47 On two occasions, the court attempted to stop Edwards but to no avail. Edwards continued:

> I don't have a problem in going to trial. My rights is being violated, as long as I can get what I need to try it, as I have a right to, then I will proceed, but I'm asking them for help. They would not give me help. It is my right to have help, effective assistance of counsel, the Sixth Amendment of the U.S. Constitution. I cannot get this.

¶48 With this statement by Edwards, the court executed its pretrial order to inform the potential jurors of the circumstances of the case. The court's explanation caused one of the jurors to say she had formed an opinion about the case based on Edwards's claim that he had not been provided counsel. The court then attempted to explain the absence of counsel, but Edwards interrupted the court. This caused the court to excuse the jury.

¶49 A discussion ensued. The State moved to strike the existing panel and summon a new one. The State reasoned:

> I believe Mr. Edwards' outbursts are prejudicial. They're inappropriate. They're in violation of pretrial orders.
>
> One juror has expressed reservations about her ability to be fair and impartial because she questioned on proper representation [sic]. There's never been a determination that any of the representation has been inappropriate, and in order to dispel that notion amongst the entire panel, we would require far more inquiries than I think that the law and this Court would allow in the matter.
>
> I think it's prejudicial. They wouldn't be secure with an instruction at this point, and I do believe Mr. Edwards will continue to act in an inappropriate ma[nn]er, which [sic] I ask that the panel be stricken.

¶50 The court then heard additional arguments. In granting the motion, the court observed that Edwards was doing "everything he can possibly do to disrupt the trial." It is upon this backdrop that Edwards argues his right against double jeopardy was violated.

¶51 We reject this claim of error for two reasons. First, the condition of "jeopardy" was never created because the first panel was stricken before it was sworn. Second, the obvious danger of jury prejudice was clearly present as the result of Edwards's outburst during his introductory statement to the members of the first panel. There was a manifest necessity to prevent such from happening. Under the circumstances, we conclude the trial court exercised sound discretion in making its ruling to strike the first panel. There simply was not a double jeopardy violation.

E. Effective Assistance of Counsel.

¶52 Next, Edwards claims he was denied his Sixth Amendment right to effective assistance of counsel.

STANDARD OF REVIEW AND APPLICABLE LAW

¶53 The analytical framework that must be employed in assessing the merits of a defendant's claim of ineffective assistance of counsel is well known. To sustain a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient, and that counsel's errors were prejudicial. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). A court need not address both components of this inquiry if the defendant does not make a sufficient showing on one. ***Strickland***, 466 U.S. at 697.

¶54 An attorney's performance is not deficient unless he or she made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. To satisfy the prejudice prong, appellant must demonstrate that counsel's deficient performance was "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." ***Id.*** at 687. In other words, there must be a showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694.

¶55 Whether counsel's actions constitute ineffective assistance is a mixed question of law and fact. ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). The trial court's determination of what the attorney did, or did not do, and the basis for the challenged conduct are factual and will be upheld unless they are clearly erroneous. ***Id.*** at 634. "However, the ultimate conclusion of whether the attorney's conduct resulted in a violation of defendant's right to effective assistance of counsel is a question of law [for which] no deference to the

trial court's decision is required." ***State v. Harvey***, 139 Wis. 2d 353, 376, 407 N.W.2d 235 (1987).

¶56 Edwards received the assistance of four counsels. For ease in understanding what deficiencies he attributed to each counsel, we shall denominate them as counsel (1), (2), (3) and (4). For the purposes of this claim of error, counsel (4) is not involved. Edwards raises ten instances of ineffective assistance of counsel.

¶57 Edwards first claims that counsels (1), (2) and (3) were deficient in failing to object to the fact that he was not served with a summons or warrant. Edwards fails to recognize the calls of WIS. STAT. § 971.31(6). When a new criminal complaint is issued, the circuit court acquires personal jurisdiction over a defendant. A corrected criminal complaint was issued against Edwards in a timely fashion. Thus, it was not unreasonable for his counsels not to make a meritless objection.

¶58 Second, Edwards claims that counsels (1), (2) and (3) were deficient in failing to object to the fact that his criminal complaint was fraudulent in that it was not signed by "the" district attorney. Again, Edwards fails to recognize the calls of WIS. STAT. § 967.03, which authorizes an assistant district attorney to discharge the duty of the district attorney. Here, the record shows that an assistant district attorney signed the criminal complaint issued against Edwards. There was no reason to file a meritless objection.

¶59 Third, Edwards claims that counsels (1) and (3) had no real interest in his case. They were only trying to bill additional hours. This claim of error fails from a total lack of any evidence to support the claim.

¶60 Fourth, Edwards claims that counsel (1) was ineffective for requesting a competency hearing before the preliminary hearing occurred. Again, Edwards fails to recognize that, pursuant to WIS. STAT. § 971.14(1)(a), if there is any question as to an accused's competency, all proceedings are to be suspended to make such a determination. Thus, counsel's actions were quite reasonable to seek a competency evaluation and hearing as soon as possible to obviate the necessity of further proceedings if Edwards was indeed incompetent to proceed.

¶61 Fifth, Edwards claims that counsel (2) was ineffective by deceiving him into waiving his preliminary hearing for the armed robbery charge. This claim of error is unintelligible. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Suffice it to say, subsequent to waiving his preliminary hearing, Edwards pled guilty to the offense. In entering a plea, he conceded that the State could prove the charge beyond a reasonable doubt, a burden of proof far greater than probable cause that Edwards committed the charged crime. Hence, there is no prejudice to Edwards for whatever is the basis for this claim.

¶62 Sixth, Edwards claims counsel (1) was ineffective because he made no opposing argument, did not call any witnesses or present any evidence at the competency hearing. The record belies this claim. Counsel argued to the court that Edwards was incompetent to stand trial. He cross-examined the doctor who opined he was competent. More importantly, Edwards himself admitted he was competent and understood what was going on. Thus, there is no basis to conclude that counsel's representation was deficient and certainly no basis to conclude that any prejudice occurred.

¶63 Seventh, Edwards claims that counsel (1) was deficient because on the date of his preliminary hearing, he withdrew his representation. The reason given by counsel to withdraw was that there were a number of matters that had to be addressed. Counsel had made numerous attempts to work with Edwards to no avail. There was a conflict that was not going away. When a new counsel was appointed, the preliminary hearing was rescheduled, but then Edwards waived the preliminary hearing. Regardless of the timeliness of the withdrawal, there was no showing of prejudice.

¶64 Eighth, Edwards claims that counsel (2) was deficient for not bringing him to a scheduling conference on May 20, 2003, when his demand for a speedy trial was denied. WISCONSIN STAT. § 971.04(1) does not require that an accused be present at a scheduling conference.

¶65 Ninth, Edwards claims that counsel (3) was ineffective for not objecting to a "de facto mistrial" when the trial court struck the first jury panel. Earlier in this opinion, we concluded that because the first panel was never sworn, jeopardy never attached. Additionally, when one reviews the content of Edwards's comments to the first jury panel in his introductory remarks and the resulting concern expressed by one of the jurors about representation for Edwards, there is a reasonable basis in the record for a trial court in the exercise of sound discretion to conclude that a manifest necessity is present to warrant a mistrial. Thus, it was reasonable not to raise a meritless objection.

¶66 Tenth, Edwards claims that counsel (3) was ineffective because he had a conflict of interest because his law firm had a client relationship with a branch of the M&I Bank system. Edwards, as noted earlier in this opinion, robbed a different branch of the M&I Bank system.

¶67 Counsel (3)'s only relationship with the M&I Bank system was a checking account, which his law firm maintained in the Brookfield, Wisconsin branch. For Edwards to show he was denied effective assistance of counsel, he must establish by clear and convincing evidence that an actual conflict of interest existed. It is not sufficient for him to show "that a mere possibility or suspicion of a conflict could arise under hypothetical circumstances." ***State v. Medrano***, 84 Wis. 2d 11, 28, 267 N.W.2d 586 (1978). "An actual conflict of interest exists only when the attorney's advocacy is somehow adversely affected by the competing loyalties." ***State v. Owen***, 202 Wis. 2d 620, 639, 551 N.W.2d 50 (Ct. App. 1996). Edwards presents no evidence that this relationship in any way tainted his representation of him. The trial court concluded there was no conflict of interest when counsel (3) was present during Edwards's plea of guilty.[4] The trial court was correct in its conclusion.

¶68 We pause briefly to examine the application of the "prejudice" prong of the ***Strickland*** rubric. The State was prepared to submit a very strong case to the jury. In fact, the State did call one witness. She was the bank teller to whom Edwards handed the note demanding that money be handed over to him. She identified him as the perpetrator. It was then that Edwards pled guilty. The State was prepared to call twenty-one additional witnesses, most of whom were police officers who either apprehended Edwards or witnessed his confession and testified at his ***Miranda-Goodchild*** hearing. The State was also prepared to submit into evidence the money that was stolen and fingerprints taken from the note that was passed to the bank teller. It is entirely unlikely that any of the alleged incidents of

[4] Counsel (3) was a standby counsel.

ineffective assistance of counsel would have affected the outcome of this case. Therefore, any defense that Edwards might have proposed was not prejudiced by the instances of conduct he alleges.

F. Motion to Withdraw.

¶69 Last, Edwards claims the trial court erred by denying his motion to withdraw his plea of guilty to the armed robbery charge. It appears that Edwards bases this claim of error on both constitutional and non-constitutional grounds.

STANDARD OF REVIEW AND APPLICABLE LAW

¶70 To successfully withdraw a guilty plea on constitutional grounds, a defendant must establish all of the following: "(a) that a violation of a constitutional right has occurred; (b) that this violation caused him to plead guilty; and (c) that at the time of his plea he was unaware of the potential constitutional challenges to the case against him because of the violation." ***Hatcher v. State***, 83 Wis. 2d 559, 565, 266 N.W.2d 320 (1978).

¶71 To successfully withdraw a guilty plea on non-constitutional grounds before sentencing, a defendant must present a "fair and just reason" for allowing the withdrawal. ***State v. Kivioja***, 225 Wis. 2d 271, 283, 592 N.W.2d 220 (1999). Fair and just means some adequate reason for a defendant's change of heart other than the desire to have a trial. ***State v. Canedy***, 161 Wis. 2d 565, 583, 469 N.W.2d 163 (1991). Whether a defendant may withdraw his plea is left to the sound discretion of the trial court. ***State v. Bollig***, 2000 WI 6, ¶28, 232 Wis. 2d 561, 605 N.W.2d 199.

¶72 As for Edwards's constitutional challenge, he claims that he was compelled to plead guilty because counsel (3) was ineffective because of a conflict

of interest arising from maintaining a checking account at an M&I Bank branch. He also claims he felt he was forced to plead guilty. We reject this claim for two reasons. First, Edwards was unable to prove an actual conflict of interest. Second, there is nothing in the record to show why he entered a guilty plea. He checked the box on his Plea Questionnaire stating that: "I give up my right to a trial," and signed the form. He stated in open court that he was making his plea "freely, voluntarily and intelligently," and agreed that his plea was not coerced under any circumstances. Thus, his plea of guilty was his own free will act.

¶73 As for the non-constitutional challenge, the record clearly reflects that the trial court, after hearing arguments from Edwards, stand-by counsel and the State, reflected on all of the tactics utilized by Edwards, and based on what it had done to accommodate him determined there was not "a fair and just reason under any circumstances to allow him to withdraw his plea." Based on the totality of the record and considering all of the challenges raised by Edwards, the trial court did not err.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.