

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 18, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1445

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICARDO GLOVER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
DENNIS J. BARRY, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Ricardo Glover appeals from the order denying his motions under WIS. STAT. § 974.06 (1999-2000).¹ He argues on appeal that the

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

trial court which convicted him lacked both personal and subject matter jurisdiction over him, that he was not brought before the court within forty-eight hours for a probable cause determination, that the sentencing court did not provide him with an opportunity to object to statements contained in the presentence investigation report, that the sentencing court was biased against him, and that the sentence imposed was unduly harsh. We reject each of these arguments and affirm.

¶2 Glover was arrested for abducting and sexually assaulting his eleven-year-old sister-in-law at knife-point and then attempting to conceal these crimes by tying her hands and throwing her off a bridge. He was initially charged with one count of child abduction and one count of attempted first-degree intentional homicide in Racine county, and one count of first-degree sexual assault and one count of child abduction while using a dangerous weapon in Kenosha county.

¶3 Glover was arrested in Racine county on May 29, 1989, at about 6:00 a.m. He was brought before the court on a bail hearing on May 30. The prosecutor gave an oral report of the charges and explained that a complaint would be filed in Racine county and that other charges were likely to be filed in Kenosha county. Criminal complaints were filed in both counties on May 31. Glover came to court in Racine for his initial appearance on May 31 at about 2:00 p.m., approximately fifty-six hours after his arrest.

¶4 Eventually the case went to trial. During the trial, and after the victim had testified, the parties reported that they were discussing a possible plea agreement. The State advised the court that it was interested in consolidating the Racine and Kenosha charges and reaching an overall plea agreement. The court

advised the parties that the particular proposal under discussion, which would have reduced the attempted homicide charge to reckless endangerment, was not appropriate based on the victim's testimony. The court further insisted on a formal assurance from the Kenosha County District Attorney and circuit court that a plea agreement would be acceptable.

¶5 Eventually an agreement was reached. Glover pled guilty to first-degree sexual assault and an amended charge of false imprisonment by use of a dangerous weapon, and no contest to attempted homicide. He faced a maximum exposure of forty-five years in prison, with the State recommending forty years. The court sentenced him to a total of forty-five years, which was the sentence recommended by the presentence report.

¶6 Because of a disagreement with appointed counsel over the merit of the appeal, Glover pursued his appeal pro se. This court affirmed the judgment of conviction. More than seven years later, Glover filed a motion under WIS. STAT. § 974.06. The circuit court held a series of hearings and eventually denied the motion. It is from the order denying the motion that Glover appeals.

¶7 Glover first argues on appeal that the circuit court lacked personal and subject matter jurisdiction over him. He argues that the court lacked jurisdiction because he was arrested without a warrant and brought to court on his bail hearing before a criminal complaint was filed. Further, he argues that the court lacked jurisdiction because a criminal complaint was not filed until fifty-six hours after his arrest.

¶8 We conclude that the issues concerning the lack of personal jurisdiction are not properly before the court because they either were or could have been presented in his direct appeal. If a ground for relief was not raised in a

prior direct appeal, it cannot form the basis for a motion under WIS. STAT. § 974.06 unless the defendant can demonstrate a sufficient reason why the matter was not raised in the prior appeal. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). Glover has not offered a sufficient reason why these issues were not raised in his direct appeal. Consequently, he is barred from raising them now.

¶9 Glover also argues that the court lacked subject matter jurisdiction. The circuit court's subject matter jurisdiction attaches upon the filing of the criminal complaint. *State v. Webster*, 196 Wis. 2d 308, 317, 538 N.W.2d 810 (Ct. App. 1995). The circuit court lacks criminal subject matter jurisdiction only when the complaint "does not charge an offense known to law." *Id.* (citations omitted). In this case, the complaint filed alleged an offense known to law.

¶10 Glover specifically maintains that he was not brought before the court for his initial appearance within forty-eight hours of his warrantless arrest, in violation of the rule established in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). In *Riverside*, the Supreme Court held that a judicial determination of probable cause must be made within forty-eight hours of a warrantless arrest. *Id.* at 57. The *Riverside* probable cause determination can be made at the initial appearance or in combination with any other pretrial proceeding. *State v. Koch*, 175 Wis. 2d 684, 698-99, 499 N.W.2d 152 (1993). Glover was brought before a court within forty-eight hours on his bail hearing at which time the State explained sufficient facts to the court to establish probable cause for Glover's arrest.

¶11 Moreover, even if there was a *Riverside* violation, Glover has not explained how he was prejudiced. By arguing that he was improperly brought before the court before the complaint was filed, he appears to be arguing that he

was brought before a court too soon. We do not see how he was prejudiced by being brought to the court for the bail hearing. Moreover, if there was a *Riverside* violation, the only remedy which would have been available to him would have been to be discharged, at which point, presumably, he would have been arrested again. If there was a *Riverside* violation, Glover was not prejudiced by it.

¶12 Glover also challenges the sentence he received. We agree with the State that these claims are not properly raised by his WIS. STAT. § 974.06 motion. The scope of a § 974.06 postconviction motion is limited to jurisdictional or constitutional issues. *Escalona-Naranjo*, 185 Wis. 2d at 177. The sentencing issues Glover raises are neither jurisdictional nor constitutional and, therefore, are not properly raised under § 974.06.

¶13 Even on the merits, however, we reject Glover's claims. Glover argues that he was not allowed to object to the inaccuracy of the PSI. The record, however, establishes the contrary. Glover and his counsel had an opportunity to object to the PSI or to ask for more time to review. They did neither.

¶14 Glover also asserts that the PSI contained inaccurate information on which the court relied when it sentenced him. Specifically, he maintains that the court improperly relied on the statement that he had lied to his wife about his upbringing and where he was raised. The circuit court found, however, that the information had not played a very significant part in its determination of the sentence. In addition, the court found that Glover had not established that the information was inaccurate. Glover testified that he disagreed with the statement, but, as the court found, this did not prove that his wife did not give this information to the report's author. Glover simply has not established that the PSI was inaccurate.

¶15 Glover also argues that the trial judge was biased against him because the court was hesitant to accept the midtrial amendment to the charges proposed by the plea agreement. The record does not show any evidence of bias by the circuit court. Glover misconstrues the role the trial court is supposed to play. “The circuit court is not a party to a plea agreement, need not agree to reduce the charges upon the prosecutor’s motion, and need not accept the prosecutor’s or defense’s sentencing recommendations.” *State v. Comstock*, 168 Wis. 2d 915, 952, 485 N.W.2d 354 (1992). The circuit court, in this case, did nothing more than play its appropriate role in accepting or rejecting the proposed plea agreement. Further, the facts of record in this case support the court’s hesitation in accepting a reduction of the crimes charged. There is no evidence whatsoever that the circuit court was biased.

¶16 Glover’s final argument is that the court’s bias against him establishes a new factor which entitles him to be resentenced. Specifically, Glover argues that since he did not have a criminal record and the victim did not suffer any serious injuries, the court must have imposed the sentence it did because the court was biased against him.

¶17 It seems incredibly perverse that Glover would rely on the purely fortuitous fact that the victim was not hurt to argue that his sentence was too harsh. The victim may not have suffered serious physical injuries, but this was certainly in spite of Glover’s actions and not because of them. Further, we have concluded that the court was not biased. The record shows that the sentence imposed was within the legal maximum allowed and was not unduly harsh. We affirm the order of the circuit court.

By the Court.—Order affirmed.

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

