STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2012AP000159-CR
2012AP000160-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ERWIN D. BECKOM,

Defendant-Appellant.

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On Appeal from the Judgment of Conviction and Order Denying Defendant's Request for Bond Return, Entered in La Crosse County, the Honorable Scott L. Horne, Presiding.

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# BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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## CASES CITED

**STATUTES CITED**

Wisconsin Statutes

## ISSUE PRESENTED

Does Wis. Stat. § 969.02(7) allow a court to apply a bond in a case in which charges have been dismissed but read-in charge toward a separate case?

Trial court answered: Yes.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Publication of the court's opinion may be warranted. There is no case that addresses the issue presented here, and this case may present the court the opportunity to provide guidance on the issue. Mr. Beckom does not request oral argument.

## STATEMENT OF THE CASE AND FACTS

On April 5, 2010, the state filed a criminal complaint in La Crosse County Case Number 10-CT-229 charging Mr. Beckom with one count of operating a motor vehicle while intoxicated as a second offense, one count of operating a motor vehicle with a prohibited alcohol concentration as a second offense, and operating a motor vehicle after revocation as a third offense. (3). At the initial appearance, the court ordered Mr. Beckom released on a $1,000 signature bond, with the conditions that he have no alcohol and enter no bars or taverns, among others. (32:3).

On April 11, 2011, the state filed a criminal complaint in La Crosse County Case Number 11-CM-470 charging Mr. Beckom with one count of misdemeanor bail jumping. The court set a $250 cash bond, which Mr. Beckom posted.

On May 3, 2011, the state filed a criminal complaint in La Crosse County Case Number 11-CM-557 charging Mr. Beckom with two counts of misdemeanor bail jumping for failing to comply with the bond conditions in 10-CT-229 and 11-CM-470.

On May 23, 2011, the state filed a criminal complaint in La Crosse County Case Number 11-CM-659 charging Mr. Beckom with three counts of misdemeanor bail jumping. The court set a $1,000 cash bond, which Mr. Beckom posted.

All of these cases were settled through a plea agreement. The plea hearing was held on June 27, 2011. Pursuant to the plea agreement, Mr. Beckom pled guilty to the operating with a prohibited alcohol concentration in Case Number 10-CT-229 and to both bail jumping counts in Case Number 11-CM-557. The remaining counts in 10-CT-229 were dismissed and read-in, and all the charges in 11-CM-470 and 11-CM-659 were dismissed and read-in. (43:3-4; 7-10).

The case proceeded to sentencing the same day. On the operating with a prohibited alcohol charge in 10-CT-229, the court imposed a fine of $350 plus costs, for a total of $916, and fifteen days in jail. (43:19). The court also allowed Mr. Beckom to participate in "OWI court." (Id.). On the bail jumping charges, the court withheld sentence and placed Mr. Beckom on probation for one year. (43:20). The court noted that a $1,000 bond had been posted in 11-CM-659, and ordered that it be applied toward the fine. In 10-CT-229 (Id. at 21; App. 104). Mr. Beckom's attorney objected to the court applying the bond money in 11-CM-659 and 11-CM-470 to the fines in 10-CT-229. (43:21-22; App. 104-105). The court stated it believed it could apply the bond money from read-in charges to those for which Mr. Beckom

was convicted, but invited defense counsel to find authority that the court could not do so. (43:22; App. 105).

Defense counsel submitted a detailed letter to the court on June 28, 2011, outlining the reasons counsel believed that the bail posted in cases that were ultimately dismissed could not be applied toward fines imposed in a separate case. (24; App. 106-108). The court held a motion hearing on the bond money issue on July 20, 2011. Regarding the application of Beckom's bail money to the fines, the court noted:

> Section 969.02 (6) authorizes the court to apply bail posted towards a judgment entered in a prosecution. Under subsection (7), where a complaint is dismissed or the defendant's acquitted, the bond is to be returned. And the question then is whether this situation in which bond is posted in a case which is dismissed but read in for sentencing consideration falls within the parameters of sub (6) which authorizes application of bail towards judgment entered in a prosecution or sub (7) which requires return for a complaint that's dismissed or where there's an acquittal.
>
> Clearly subsection (7) reflects a legislative judgment that when a defendant is found not responsible for criminal conduct that it would be unjust to apply any bond posted in that case towards a judgment of conviction in which there is culpability.
>
> Now, this stands on a little bit different footing. Mr. Beckom has not been found innocent or acquitted of that conduct. The complaint has been dismissed but read in, meaning Mr. Beckom has agreed with respect to 11-CM-479 and 11-CM-659 that the Court may take those cases into consideration in sentencing for the case in 10-CT-229.

The provision allowing for application of bail refers to a prosecution in which a judgment is entered as opposed to a complaint.

Now, in this case we had a series of cases, including the read-in offenses as well as the offenses that Mr. Beckom was convicted of, that were resolved at a single plea and sentencing hearing. There's been no determination that Mr. Beckom is not responsible for the read-in offenses.

As I indicate, he's agreed that the Court may take those into account, and it would be this Court's determination that the term prosecution is broad enough to encompass not only complaints for which a conviction has been entered but other offenses which are read in for sentencing consideration at the same plea and sentencing hearing. The term prosecution is a broader term than complaint or information.

And it would be the Court's determination that subsection (7) which authorizes return of the bond posted in complaints which are dismissed or for which there is an acquittal is intended to ensure that bond money is returned where a defendant is not culpable for the conduct that's alleged.

Since Mr. Beckom has accepted legal responsibility through the read-in, it would be the Court's determination that the principle or rationale does not apply and that the statutory provision allowing application of bond for a, quote-unquote, prosecution in which there's a conviction applies, that the term, quote-unquote prosecution is broad enough to encompass not only the complaint for which there's a conviction but also offenses that are read in for sentencing consideration.

For that reason then it would be this Court's determination that the motion for return of bond money posted in 10-CM-470 and 11-CM-659 should be denied

> and that the bond money should be applied to the fines and costs in 10-CT-229. If there's a balance after application, that would be returned. If there's amounts [sic] remaining then Mr. Beckom would be obligated for those remaining amounts.

(41:2-4; App. 110-112).

## ARGUMENT

### Because Wis. Stat. § 969.02(7) Requires that a Court Return a Bond in a Case in Which Charges have Been Dismissed, a Court May Not Apply a Bond in a Case in Which Charges Have Been Dismissed and Read-In Toward Fines in a Different Case.

This case requires the court to determine whether Wisconsin Statute § 969.02(7) allows a court to apply a bond in a case in which all charges have been dismissed and read-in toward a separate case in which the defendant has been convicted and assessed fines and costs. Two parts of Wisconsin Statute § 969.02 are relevant to this issue.

Wisconsin Statute § 969.02(6) reads:

> When a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. (2), the balance of such deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

Wisconsin Statute § 969.02(7) reads:

> If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit under

> sub. (2) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (6).

This issue requires this court to interpret the statute, something this court reviews *de novo*. ***In re Commitment of Burris***, 2004 WI 91, ¶ 31, 273 Wis. 2d 294, 682 N.W.2d 812.

This court reviews a statute to ascertain its meaning, so that the statute may be given its full, proper and intended effect. ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. When interpreting a statute, this court begins with the language of the statute. If the meaning of the statute is clear, the court stops its inquiry there. ***Seider v. O'Connell***, 2000 WI 76, ¶ 43, 236 Wis. 2d 211, 612 N.W.2d 659. If the statutory language is ambiguous, the court may turn to external sources to assist with the interpretation. ***State v. Baker***, 2005 WI App 45, 280 Wis. 2d 181, 694 N.W.2d 415.

Although neither statute subsection directs how the court should treat an offense that has been dismissed and read-in, the plain language of the subsections makes clear that a complaint that is dismissed requires return of any bond that has been paid. Wisconsin Statute section 969.02(7) explicitly states that if a complaint is dismissed, the entire sum deposited *shall* be returned. The word "shall" is presumed mandatory when it appears in a statute. ***In re Commitment of Elizabeth M.P.***, 203 WI App 232, ¶ 21, 267 Wis. 2d 739, 672 N.W.2d 88. In addition, section 969.02(6) allows for bond to be applied in cases only when a judgment of conviction has been entered.

In this case, the circuit court erred when it concluded that the statute section requiring that a bond be returned when a complaint is dismissed does not apply to situations in which

a charge is dismissed but read in. (41:4; App. 112). The court's conclusion is wrong.

The term "read-in" is specifically defined by statute as a dismissal:

> "Read-in crime" means any crime that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing the defendant for the crime for which the defendant was convicted.

Wisconsin Statute § 973.20(1g)(b). An offense that has been dismissed and read-in can be used only in very limited ways: it can be considered at sentencing, and it can form the basis for a restitution order. Wis. Stat. § 973.20. Because a read-in offense is by definition one that has been dismissed, no judgment of conviction is entered. Because the read-in offense does not result in a judgment of conviction being entered, the bail money must be returned to the poster.

Because an offense that is read-in does not constitute a conviction, and because the bond statute clearly requires a bond posted in a case in which the complaint is dismissed to be returned to the poster, the court erroneously exercised its discretion when it did not return the bonds in the dismissed cases.

## CONCLUSION

For the reasons stated above, Beckom respectfully requests that this court reverse the circuit court's order applying the bond money in La Crosse County Case Numbers 11-CM-470 and 11-CM-659 to the fines in La Crosse County Case Number 11-CT-229.

Dated this 26th day of November, 2012.

Respectfully submitted,

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## CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1,806 words.

## CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 26th day of November, 2012.

Signed:

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# CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 26th day of November, 2012.

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