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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case Nos. 2012AP000159-CR
2012AP000160-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ERWIN D. BECKOM,

Defendant-Appellant.

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

BRIEF AND SUPPLEMENTAL APPENDIX OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Does ch. 969 require a circuit court to apply cash bail deposited in a case that is dismissed but read-in for sentencing to satisfy fines and court costs imposed in other cases when the many cases are prosecuted at one plea and sentencing proceeding?

Circuit court answered: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State agrees with Beckom's statements on oral argument and publication. Oral argument is not necessary because the briefs fully set forth the facts and the legal authorities governing this court's review of the circuit court's decision. The State believes that this court's opinion will further develop the law and might announce new rules of law. Thus, the State submits that publication of this court's opinion will be appropriate.

ARGUMENT

I. CHAPTER 969 REQUIRES A CIRCUIT COURT TO APPLY BAIL DEPOSITED IN A CASE THAT IS DISMISSED BUT READ-IN FOR SENTENCING TO SATISFY FINES AND COURT COSTS IMPOSED IN OTHER CASES WHEN ALL CASES ARE PROSECUTED AT ONE PLEA AND SENTENCING PROCEEDING.

A. Beckom's Argument.

In this appeal, Beckom argues that the circuit court erred when it applied his bail deposit in one case where the charges were dismissed but read-in, to satisfy the court costs and fines in his many cases, even though all cases had been prosecuted at one plea and sentencing proceeding (Appellant's brief 5–7). Beckom claims that the plain language of the misdemeanor bail procedure under Wis. Stat. § 969.02(7)[1] requires the circuit court to return the bail deposit if a complaint is dismissed, and that Wis. Stat. § 969.02(6) authorizes the deposit to be applied only in cases where a judgment of conviction is entered (Appellant's brief at 6). Beckom concedes that sec. 969.02 does not clearly address bail deposit return for charges in complaints which are dismissed but read-in for a court to consider at sentencing, but insists that because such charges do not result in a judgment of conviction, the court must interpret the bail procedure to require the return of deposits in such cases (Appellant's brief at 7).

B. Background on Misdemeanor Bail Procedure in Wisconsin.

All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm or prevent the intimidation of witnesses. Wis. Const. art. I, § 8(2); Wis. Stat. § 969.01(4); *see also*, *Demmith v. Wisconsin Judicial Conference*, 166 Wis. 2d 649, 659, 480 N.W.2d 502, 506 (1992). The judicial conference has developed guidelines for cash bail for persons accused of misdemeanors which the supreme court has adopted by rule

[1] All references to the Wisconsin Statutes are to the 2009–10 version unless otherwise noted.

and which relate primarily to individuals. Wis. Stat. § 969.065. Persons arrested for misdemeanors are released from custody upon compliance with the misdemeanor bail schedule unless bail is otherwise set by the court. *See* Supreme Court of Wisconsin Uniform Misdemeanor Bail Schedule Order, Preamble (adopted Nov. 7, 2011).

"Bail" means monetary conditions of release, Wis. Stat. § 969.001(1), and more specifically means the amount of money set by the court which is required to be obligated and secured as provided by law for the release of a person in custody so that the person will appear before the court in which the person's appearance may be required and that the person will comply with such conditions as are set forth in the bail bond. Wis. Stat. § 967.02(3). "Bail is a device which exists to insure society's interest in having the accused answer to a criminal prosecution without unduly restricting his liberty and without ignoring the accused's right to be presumed innocent." *State v. Shumate*, 107 Wis. 2d 460, 467, 319 N.W.2d 834, 838 (1982). Bail relates primarily to the individual and not the charges, although the nature and gravity of the charges are factors in affixing a reasonable amount of bail. *Demmith*, 166 Wis. 2d at 662; *see also*, *Whitty v. State*, 34 Wis. 2d 278, 286, 149 N.W.2d 557, 560 (1967).

In Wisconsin, ch. 969 governs the administration of bail in criminal proceedings. *State v. Braun*, 100 Wis. 2d 77, 82, 301 N.W.2d 180, 183 (1981). The present form of ch. 969 is the result of the legislature providing circuit courts flexibility and efficiency in setting the terms of bail to achieve three interests: protecting the community, protecting the victim, and protecting the judicial system. *See State v. Anderson*, 219 Wis. 2d 739, 754, 580 N.W.2d 329, 336 (1998) *holding modified by State v. Davison*, 2003 WI 89,

263 Wis. 2d 145, 666 N.W.2d 1; *see also*, *State v. Givens*, 88 Wis. 2d 457, 463–64, 276 N.W.2d 790, 793 (1979).

If bail is imposed, it is must be only in the amount found necessary to ensure the appearance of the defendant. Wis. Stat. § 969.01(4). Wis. Stat. § 969.01(4) codifies the proper considerations in fixing a reasonable amount of bail and imposing other reasonable conditions of release that was enumerated by the supreme court in *Whitty*, 34 Wis. 2d at 286:

> Proper considerations in fixing a reasonable amount of bail which will assure the defendant's appearance for trial include the ability of the accused to give bail, the nature and gravity of the offense and the potential penalty the accused faces, the character and reputation of the accused, his health, the character and strength of the evidence, whether the accused is already under bond in other pending cases, and whether the accused has in the past forfeited bond or was a fugitive from justice at the time of arrest.

Under sec. 969.02, a court may release a defendant charged with a misdemeanor in one of four ways: (1) without bail deposit – commonly known as a "personal recognizance bond"; (2) with an unsecured appearance bond in an amount specified by the judge – a "signature bond" or possibly a "property bond"; (3) with an appearance bond with sufficient solvent sureties – a "surety bond"; or (4) with an appearance bond with the deposit of cash in lieu of sureties – a "cash bond". *See* Wis. Stat. §§ 969.02(1) – (2). "Bond" means an undertaking either secured or unsecured entered into by a person in custody by which the person binds himself or herself to comply with such conditions as are set forth therein. Wis. Stat. § 967.02(4).

Pertinent to this case, ch. 969 also sets forth other statutory provisions relating to administration of misdemeanor bail deposits: (1) once a defendant accrues additional charges; (2) once a judgment of conviction is entered in a prosecution in which there is a surety or cash bond; and (3) once a complaint against a defendant has been dismissed or if a defendant is acquitted:

> (5) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08.
>
> (6) 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.
>
> (7) 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).

Wis. Stat. §§ 969.02(5)–(7).

During a defendant's release, ch. 969 also grants courts with high discretion in administering bonds, including the authority to increase, reduce, revoke, or otherwise modify bonds, as well as the authority to issue a single bond to cover many files. Wis. Stat. § 902.08; *see also*, *State v. Ascencio*, 92 Wis. 2d 822, 829, 285 N.W.2d 910, 914 (Ct. App. 1979);

see also, State v. Achterberg, 201 Wis. 2d 291, 300–301, 548 N.W.2d 515, 518 (1996).

C. Applicable Legal Principles.

The State agrees that this case requires the court to interpret ch. 969 to determine if a circuit court is required to apply a bail deposit in one case where charges are dismissed but read-in, to satisfy fines and court costs imposed for many cases prosecuted at one plea and sentencing proceeding.

The construction of statutes and their application to a particular set of facts is a question of law, which this court reviews de novo; however, this court can benefit from the circuit court's analysis. *Pritchard v. Madison Metro. Sch. Dist.*, 2001 WI App 62, ¶ 7, 242 Wis. 2d 301, 308, 625 N.W.2d 613, 616.

The purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 662, 681 N.W.2d 110, 124. This court begins with the statute's text, giving it the common, ordinary, and accepted meaning. *Id*. at ¶ 45. However, this court interprets statutory language in context, "not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results." *Id*. at ¶ 46. Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage and if this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning. *Id*. If the statutory language is ambiguous then this court may consult external sources – typically items of legislative history. *Id*. at ¶ 50.

This court has previously interpreted Wis. Stat. § 969.02(6) (2003–04) to require a circuit court to apply the balance of any bail deposit in one case toward the satisfaction of court costs in many cases prosecuted at the same plea and sentencing proceeding. *See State v. Baker*, 2005 WI App 45, ¶ 7, 280 Wis. 2d 181, 187–88, 694 N.W.2d 415, 418. In *Baker*, the defendant's father had posted a $500 bail deposit in one case that was in effect at the time of plea and sentencing of the defendant's many cases. *Id.* at ¶ 2a. The defendant pleaded no contest to two counts in one case, and one count in a second case, and the circuit court found him guilty of those counts. *Id*. However because the defendant was on bond at the time he committed those offenses, the findings of guilt also triggered five additional convictions in a third case as a result of the bond violation. *Id*. at ¶ 2. In the many cases, the court imposed $375 in filing fees for the five counts in the third case pursuant to Wis. Stat. § 814.61(1)(a) (2003–04); $60 in filing fees for three criminal charges pursuant to Wis. Stat. § 814.60(1) (2003–04); and $150 for crime victim and witness assistance surcharges for three criminal charges pursuant to Wis. Stat. § 973.045 (2003–04). *Id*. The circuit court ordered the return of the $500 bail deposit to the defendant's father and permitted the defendant to satisfy the costs through pre-sentence jail incarceration credit. *Id.* at ¶ 2a. This court concluded that the plain language of Wis. Stat. § 969.02(6) (2003–04) required the application of any bail deposit to the total costs in the many cases and that the circuit court erred by returning the deposit since its application to court costs is mandated by statute. *Id*. at ¶¶ 7–9.

D. Application of Legal Principles to Facts of this Case.

In this case, Beckom's reading of subsecs. 969.02(6) and (7) as requiring the return of his bail deposit is erroneous because: (1) those subsections require application of any bail deposits to all court costs in many cases prosecuted at one plea and sentencing proceeding given the plain language of those subsections and their relationship to surrounding and closely related statutes, particularly Wis. Stat. § 969.02(5), and moreover this court's decision in *Baker*, 2005 WI App 45; and (2) the legislative purpose behind ch. 969 in providing courts flexibility and efficiency in bail administration resolves any possible misapprehension of the statutory language.

1. This court should affirm the circuit court's determination to apply Beckom's bail deposit in the read-in case to the costs of the prosecution given the plain language of ch. 969 and this court's holding in *Baker*.

First, Beckom argues that an offense that has been dismissed but read-in can be used only in very limited ways: for sentence consideration and for restitution order basis, but when no judgment of conviction is entered, any bail deposit for such dismissed but read-in charges must be returned (Appellant's brief at 7). As authority for his claim, Beckom cites Wis. Stat. § 973.20(1g)(b) which defines "read-in crime" (Appellant's brief at 7):

> (1g) In this section:
>
> (b) "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.

Wis. Stat. § 973.20(1g)(b).

While it is true that "read-in crime" is defined in Wis. Stat. § 973.20(1g)(b), nothing in that subsection expressly limits the use of read-in charges to solely sentencing and restitution purposes, and moreover, "read-in crimes" by its own definition is confined to use in interpreting section 973.20. It does not purport to define "read-in" for purposes of ch. 969 or other statutory chapters. *See id*. It is noteworthy that in sec. 973.20, if the court does order restitution, even on read-in charges, it must impose a 5% restitution surcharge based on the total amounts of all prosecution costs:

> The court shall impose on the defendant a restitution surcharge under ch. 814 equal to 5% of the total amount of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered under s. 973.05(1) and imposed under ch. 814, which shall be paid to the department or the clerk of court for administrative expenses under this section.

Wis. Stat. § 973.20(11)(a) (in relevant part).

In practicality, "read-in" charges are used by the courts in more expansive ways; for example, the supreme court in *State v. Floyd*, 2000 WI 14, ¶ 32, 232 Wis. 2d 767, 779–80, 606 N.W.2d 155, 161–62, determined that pre-trial confinement on a dismissed charge that is read-in at sentencing relates to "an offense for which the offender is ultimately sentenced" entitling a defendant to sentence credit pursuant to Wis. Stat. § 973.155(1). Furthermore, the

supreme court recently held that, in sentencing, strong public policy demands a circuit court must consider all relevant information including read-in charges, and even must consider charges that are dismissed outright. *State v. Frey*, 2012 WI 99, ¶ 32, 343 Wis. 2d 358, 375–76, 817 N.W.2d 436, 444–45. In *Frey*, the supreme court reiterated that in Wisconsin, the "read-in" procedure is an important aspect of the plea bargaining process given the promise of the prosecutor not to further prosecute and of sentencing after trial given the likelihood of a higher sentence and possible responsibility for restitution. *Id*. at ¶¶ 60–68. Of pertinence to this case, the supreme court's analysis in *Frey* pointed out that "read-in" charges implicate critical stages in a criminal *prosecution*. *Id*. at ¶ 40 (emphasis added).

In this case, the circuit court determined that subsecs. 969.02(6) and (7) authorized the application of Beckom's bail deposit towards a judgment entered in the entire prosecution (Appellant's brief at 3). The circuit court determined that the term "prosecution" is a broader term than "complaint" or "information", and 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 proceeding (Appellant's brief at 4). Therefore, the circuit court determined that return of bail under Wis. Stat. § 969.02(7) did not apply because the read-in charges were not dismissed without culpability, but rather, there was no acquittal nor determination that Beckom was not responsible for the read-in charges to warrant return of the bail deposit (Appellant's brief at 4). This court can benefit from the circuit court's analysis interpreting those subsections. *Pritchard*, 2001 WI App 62, at ¶ 7.

The circuit court's analysis is supported by the concept of bail which relates to the person and not the charges, a fact

emphasized in Wis. Stat. § 969.02(5). Although administratively, bail is affixed on court cases, because the purpose of bail is to ensure the appearance of a person to answer charges and comply with bond conditions without unduly restricting liberty and without ignoring the accused's right to be presumed innocent, *see Shumate*, 107 Wis. 2d at 467, it actually relates primarily to the person, and not to the specific charges which are just factors in fixing a reasonable amount of bail. *See Demmith*, 166 Wis. 2d at 662. Thus, in this case, while the circuit court required Beckom to deposit cash bail in two complaints (Appellant's brief 1–2; App. 102–109), such amounts are attached to his appearance and not necessarily the charges.

Wis. Stat. § 969.02(5) is instructive of the bail concept, it reads:

> (5) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08.

Subsections 969.02(6) and (7) are part and parcel of ch. 969 which lays out the framework of a court's authority to release persons on bail. This court should interpret those subsections, in context, not in isolation, with the surrounding statutes, particularly Wis. Stat. § 969.02(5), to avoid absurd or unreasonable results. *See State v. Dewitt*, 2008 WI App 134, ¶ 14, 313 Wis. 2d 794, 800, 758 N.W.2d 201, 204.

In *Baker*, this court performed an analysis similar to the circuit court's analysis here, by interpreting subsections 969.02(6) and (7) and concluding that any bail deposit must be applied to the costs in the many files prosecuted at one plea and sentencing proceeding. *Baker*, 2005 WI App 45, at ¶ 7. Likewise, in this case, Beckom was charged by the State in

four separate complaints, and in each case the circuit court issued either a signature bond or cash bond (Appellant's brief at 1; App. 102–109). As Beckom accrued each separate complaint, under the plain language of Wis. Stat. § 969.02(5), his original bail in each of the earlier-filed complaints continued along to the later-filed cases. At the time Beckom resolved his many cases at the plea and sentencing on June 27, 2011 (Appellant's brief at 2), any previously posted bail deposits continued and were made available to be applied to the costs involved in the prosecution of Beckom's many cases, as required by Wis. Stat. § 969.02(6).

Beckom's reading of subsecs. 969.02(6) and (7) creates absurd and unreasonable results and is in direct conflict with this court's decision in *Baker*. Assuming arguendo, as Beckom argues "read-in" charges were limited to sentencing consideration and restitution (Appellant's brief at 7). Consider a scenario where a defendant is charged with one misdemeanor count in a first complaint and issued a signature bond, then is later charged with one misdemeanor count in a second complaint and is required to deposit $1000 cash bail for that complaint. Under plea agreement, the defendant pleads guilty to the charge in the first complaint, while the second complaint is dismissed but read-in. No restitution is ordered in the first case, but $500 restitution is ordered in the second case, plus a 5% restitution surcharge equal to the total amount of restitution, court costs, fines, and other amounts pursuant to Wis. Stat. § 973.20(11)(a). According to Beckom's interpretation of subsecs. 969.02(6) and (7), the cash bail in the second complaint is limited to satisfying only the $500 restitution amount – the mandatory 5% restitution surcharge which is a percentage of the courts costs and fees in the entire prosecution, including the costs of the complaint in which a conviction was entered, cannot be satisfied with the $1000 cash bail deposit. Beckom's reading

of those subsections is absurd and unreasonable because it would require the courts to maintain and track each bond separately to prevent co-mingling of deposits, inapposite to this court's holding in *Baker* that any available bail be used to satisfy all costs at the one plea and sentencing proceeding. *See Baker*, 2005 WI App 45, at ¶ 7.

2. The legislative purpose behind ch. 969 in providing courts flexibility and efficiency in bail administration resolves any possible misapprehension of the statutory language.

Second, the State affirms that the plain language in ch. 969 is unambiguous however the legislative purpose could aid in resolving any possible misapprehension.

In *State v. Givens*, 88 Wis. 2d at 463–64, 276 N.W.2d at 793, the supreme court determined that the purpose of the legislature's 1969 statutory revisions to ch. 969 was to increase flexibility and efficiency for the courts in bail administration. In *State v. Anderson*, 219 Wis. 2d at 754, 580 N.W.2d at 336, regarding the 1981 statutory revisions to ch. 969, the supreme court again summarized the same principle that the legislature sought to give circuit courts flexibility in bail administration to achieve three interests: protecting the community, protecting the victim, and protecting the judicial system.

The necessity of maintaining such flexibility and efficiency for the circuit court is especially apparent in this case. Time after time, Beckom violated the terms of his bond by committing new crimes, ultimately accruing four separate complaints. (Appellant's brief 1–2). Where here, the courts

issued Beckom a separate bail bond for each complaint (App. 102–109), any court he appeared before had high discretion, with or without motion of the parties, to increase, reduce, revoke, or otherwise modify his bonds – including issuing a single bond to cover his many files. *See* Wis. Stat. § 969.08; *see also*, *Ascencio*, 92 Wis. 2d at 829; *see also Achterberg*, 201 Wis. 2d at 300–301. If any court had exercised such discretion to issue a single bond, Beckom's complete line of argument would be precluded, since the one bond would cover both the complaints with judgments of convictions entered and the complaints with charges dismissed but read-in. Although not sacrosanct, the court's decision is highly discretionary to maintain four separate bonds, and it reverberates the legislative purpose of providing the flexibility and efficiency in bail administration, and courts should not be hampered by the onerous exercise process of issuing and reissuing bonds to cover a defendant's many cases.

Last, it is worth noting that in his four complaints, Beckom signed two signature bonds and two cash bonds in which the bond agreements notified him that any fines or court costs is paid out of the bail bonds without further notice (App. 102–109). Signature bonds and cash bonds both require the deposit of bail – either by an unsecured pledge or secured cash deposit. *See* Wis. Stat. §§ 969.02(1)–(2). Across the four cases, Beckom's bail totaled $2000 in the form of unsecured pledges and $1250 in the form of secured cash deposits (App. 102–109). Thus, at the time of plea and sentencing on June 27, 2011, the court had $3750 total in unsecured pledges and secured deposits from the four cases it could apply per the bond agreements to fines or court costs without further notice to Beckom. Bail bond agreements, however, are not made in a vacuum and must be read and interpreted in light of applicable bail statutes. *Braun*, 100

Wis. 2d at 82. The plain language of the bail statutes in ch. 969 demands any bail deposit be applied to all prosecution costs.

CONCLUSION

For the reasons stated above, the State respectfully requests that this court affirm the circuit court's order denying the return of Beckom's bail deposit.

Dated this 26th day of December, 2012.

Respectfully submitted,

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CERTIFICATE 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 4,048 words.

Dated this 26th day of December, 2012.

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I 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.

I further certify 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 December, 2012.

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