STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case Nos. 2012AP000159-CR and 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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# REPLY BRIEF OF DEFENDANT-APPELLANT

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DEVON M. LEE
Assistant State Public Defender
State Bar No. 1037605

Office of the State Public Defender
315 N. Henry Street, 2nd Floor
Madison, WI 53703
(608) 261-0633
leede@opd.wi.gov

Attorney for Defendant-Appellant

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### 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.

The only relevant question presented in this appeal is whether a charge that is dismissed but read-in fits under Wis. Stat. § 969.02(6), or whether it fits under Wis. Stat. § 969.02(7). Our supreme court has explicitly stated that a read-in offense is a dismissal: "Needless to say, there is no conviction for an offense that is dismissed and read in…" ***State v. Martel***, 2003 WI 70, ¶ 21, 262 Wis. 2d 483, 664 N.W.2d 69. There can be no question that Wis. Stat. § 969.02(6) applies only when a judgment of conviction has been entered; it explicitly states so. As a result, this court should conclude that Mr. Beckom's bond money must be returned to him.

The state argues that this court should consider circuit court's interpretation of the relevant statute subsections, and subsection (7) should not apply to read-in offenses because Mr. Beckom was not found "innocent or acquitted of that conduct." (State's brief at 10; 41:3). The circuit court's analysis here is not helpful because it has no solid legal foundation. Although it may be tempting to try to find a way to use this statute to apply Mr. Beckom's bond money toward the payment of the judgment in another case, the statute does not provide room for this interpretation. Courts are not without recourse if a defendant does not comply with the requirements of his bond; the circuit court can enter a

forfeiture order. *See* Wis. Stat. § 969.13. The court did not utilize that procedure here.

The state also argues that Chapter 969 gives the court authority to issue a single bond to cover many files. (State's Brief at 5). The state cites Wis. Stat. § 902.08[1] and two cases to support this proposition; Beckom does not read either the statute or the cases as allowing a court to issue one bond to cover several cases. Even if a circuit court has that authority, the court did not exercise it in these cases. The state makes a related argument that the concept of bail which "relates to the person and not the charges," (State's brief at 10-11). The state argues that Wis. Stat. § 969.02(5) means that bail follows the person, and not the charge. The state argues that as Beckom accrued new charges, "his original bail in each of the earlier-filed complaints continued along to the later-filed cases." This analysis is flawed. Beckom's bail for each charge remained associated with each original charge. (*See* State's brief at 14; *see also* State's App. at 102-109). Wisconsin Statue § 969.02(5) explicitly relates to charges, not people: it provides for continuity in bail as a case moves through the system, subject to the court modifying the bail as allowed by Wis. Stat. § 969.08.

The state argues that Beckom's reading of the statutes creates absurd and unreasonable results, and argues that Beckom's interpretation "is in direct conflict with this court's decision in ***Baker***." (State's brief at 12). This is wrong. In ***Baker***, this court considered whether a circuit court could order payment of court costs through application of credit for jail incarceration time. ***State v. Baker***, 2005 WI App 45, ¶ 3, 280 Wis. 2d 181, 694 N.W.2d 415. The statute in that case

[1] Although the state cites § 902.08, Beckom believes the state is referring to § 969.08.

required a court to apply the deposit made in a cash bond toward payment of a judgment. ***Id.*** at ¶ 7. The court noted that the word "shall" is presumed mandatory when it appears in a statute. ***Id.*** (citations omitted). This court concluded that the circuit court did not have the authority to ignore the statute's mandatory language. ***Id.*** at ¶ 13. This court should reach the same conclusion here: because Wis. Stat. § 969.02(7) states that if a complaint against a defendant has been dismissed, the entire sum deposited shall be returned, the circuit court did not have the authority to do anything with Mr. Beckom's bond money but return it to him.

The state's argument makes sense only if one concludes that a read-in offense is actually a conviction, because only when a judgment of conviction is entered does the cash deposited for the bond get applied to restitution and payment of the judgment. Wis. Stat. § 969.02(6). This is absurd: under no circumstances is a read-in offense considered a conviction. As Beckom noted in his brief-in-chief, the only statutory definition of "read-in" exists in Wis. Stat. § 973.20, and the term is explicitly defined, in relevant part, as a crime that is uncharged or that is dismissed as part of a plea agreement.

The state also argues that the definition provided in Wis. Stat. § 973.20 is a definition only for purposes of restitution, and that read-in charges are used by the courts in more expansive ways. (State's brief at 9). Although the state argues that the supreme court's analysis of read-ins in ***State v. Floyd***, 2004 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155 and ***State v. Frey***, 2012 WI 99, 343 Wis. 2d 358, 817 N.W.2d 436, indicates that the term "read-in" should be read expansively, the supreme court's analysis in each of these cases inapplicable here. (State's brief at 9-10). In ***State v. Floyd***, the Court considered whether pretrial confinement on

a charge that was dismissed and read-in at sentencing related to an offense for which the defendant was ultimately sentenced. ***Floyd*** at ¶ 32. The statute at issue in that case was ambiguous, and the court concluded that a charge that was dismissed and read-in was a charge that "related to an offense" for which the defendant was ultimately sentenced. In ***Frey***, the Court focused only on the distinction between dismissed charges and dismissed and read-in charges for purposes of sentencing. ***Frey*** at ¶ 5. The ***Frey*** court noted that the read-in procedure was essentially a sentencing mechanism. Id. at ¶ 64 (citing ***Austin v. State***, 49 Wis. 2d 727, 733, 183 N.W.2d 56 (1971)). Neither of these cases stands for the proposition that a read-in is somehow akin to a conviction; on the contrary, the analysis in both cases makes clear that an offense that a "read-in" is a dismissal.

As noted above, our supreme court has explicitly stated that a read-in offense is a dismissal: "Needless to say, there is no conviction for an offense that is dismissed and read in…" ***State v. Martel***, 2003 WI 70, ¶ 21, 262 Wis. 2d 483, 664 N.W.2d 69. Nothing in the states argument contradicts this basic legal tenet.

Given that the statute requires that a bond be returned if a complaint is dismissed, as it was here, this court should conclude that Mr. Beckom's bond money must be returned to him.

## CONCLUSION

For the reasons stated above and in his brief-in-chief, 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 10th day of January, 2013.

Respectfully submitted,

DEVON M. LEE
Assistant State Public Defender
State Bar No. 1037605

Office of the State Public Defender
315 N. Henry Street, 2nd Floor
Madison, WI 53703
(608) 261-0633
leede@opd.wi.gov

Attorney for Defendant-Appellant

## 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 1,211 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 10th day of January, 2013.

Signed:

DEVON M. LEE
Assistant State Public Defender
State Bar No. 1037605

Office of the State Public Defender
315 N. Henry Street, 2nd Floor
Madison, WI 53703
(608) 261-0633
leede@opd.wi.gov

Attorney for Defendant-Appellant