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STATE OF WISCONSIN

02-15-2013

COURT OF APPEALS

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

DISTRICT II

STATE OF WISCONSIN

Plaintiff-Respondent,

Case No. 2012-AP-1582-CR

v.

ANDREW MATASEK,

Defendant-Appellant

ON NOTICE OF APPEAL TO REVIEW A JUDGMENT OF CONVICTION
ENTERED IN THE OZAUKEE COUNTY CIRCUIT COURT, THE HONORABLE
THOMAS WOLFGRAM, PRESIDING

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. WIS. STAT. § 973.015 PROVIDES THE CIRCUIT COURT WITH THE DISCRETION TO ORDER EXPUNGMENT AT SENTENCING AND STAY THE ORDER UPON SUCCESSFUL COMPLETION OF PROBATION

“[T]he cardinal rule in interpreting statutes is that the purpose of the whole act is to be sought and is favored over a construction which will defeat the manifest object of the act.” *Id* at ¶ 38 (quoting *Student Ass’n v. Baum*, 74 Wis.2d 283, 294–95, 246 N.W.2d 622 (1976) (citation omitted)).

The purpose of statutory interpretation is the “determine what the statute means so that it may be given its full, proper, and intended effect.” *Kalal*, 2004 WI 58 at ¶ 44.

The § 973.015 allows expungement for many offenses and only requires that the circuit find: (1) society will not be harmed; (2) the defendant will benefit; (3) the defendant was under twenty-five years old. The legislature did not provide guidance on how the court is to determine whether society will be harmed or if the defendant will benefit. Clearly, the legislature intended that the circuit court to have wide discretion on what to consider when making those determinations.

The Respondent is arguing that the sentencing court has no discretion on whether to stay the execution of an expungement order until the successful completion of probation. (Res. Br. p. 4-5). The Respondent also argues that this ignores the plain language of the statute. (Res. Br. p. 6)

However, the Respondent's argument completely ignores the "full, proper and intended effect" of the statute; namely, that youthful offenders shielded from some of the harsh consequences of criminal convictions, *See State v. Anderson*, 160 Wis.2d 435, 466 N.W.2d 681, (Wis. Ct. App. 1991), and that only those defendants who will not harm society are expunged. The best way for a circuit court to honor the intended effect of the statute is to stay the execution of the expungement order until the successful completion of the probationary term.

The circuit court's considerable power of discretion is well established in Wisconsin sentencing law. *See State v. Killory*, 73 Wis. 2d 400, 408, 243 N.W.2d 475 (1976), *State v. Stuhr*, 92 Wis.2d 46, 284 N.W.2d 259 (Ct. App. 1979); *Cumminghan v. State*, 76 Wis.2d 277, 251 N.W.2d 65 (1977). The Respondent's reading of the § 973.015 is contrary to that sentencing discretion. The Respondent wants this court to read the phrase "at the time of

sentencing" by itself and simply ignore the remaining portions of the statute.

Conversely, case law suggests this court consider the context of the statute and not look at the statutory language in isolation, "but as part of a whole." *Kalal*, 2004 WI 58, ¶ 46, 271 Wis.2d 633, 681 N.W.2d 110 (citing *State v. Delaney*, 2003 WI 9, 13, 259 Wis. 2d 77, 658 N.W.2d 416; *Landis v. Physicians Ins. Co. of Wis.*, 2001 WI 86, ¶ 16, 245 Wis. 2d 1, 628 N.W.2d 893).

The entire statute provides the circuit court with discretion on the expungement order. Not allowing the circuit court to stay the execution of the expungement order until the defendant successfully completes probation ignores the context and intended effect of the statute.

CONCLUSION

Mr. Matasek meets all the objective conditions for expungement. He was under 25 at the time of the offense and his charge was a felony with a maximum term of imprisonment for three and one half years. The Court erred when it ruled that it could not stay its decision on expungement until after Mr. Matasek successfully completed probation. For the foregoing reasons, the defendant-appellant requests this case be remanded back to the trial

court for a new sentencing hearing based solely on the
expungement issue.

Dated: February 14, 2013

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Andrew Matasek

CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c), Stats., for a brief produced using the following font:

Monospaced font: 10 characters per inch; double-spaced; 1.5 inch margin on the left side and 1-inch margins on the other 3 sides. The length of this brief is 5 pages.

Dated this 14th date of February 2013 at Milwaukee,
Wisconsin

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CERTIFICATION 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 s. 809.19(12). I further certify that:

The electronic brief is identical in content and format to the printed form of the brief filed as of 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.

Jeffrey J. Guerard

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