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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
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CASE NO. 2015AP001782-CR

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT,

-vs- **Case No. 2015 CF 766**
(Rock County)

SAMBATH PAL,
DEFENDANT-APPELLANT.

ON APPEAL FROM THE JUDGMENT OF CONVICTION AND THE ORDER DENYING POSTCONVICTION RELIEF, BOTH ENTERED IN ROCK COUNTY CIRCUIT COURT, THE HONORABLE RICHARD T. WERNER PRESIDING.

DEFENDANT-APPELLANT'S REPLY BRIEF

BY:

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CASES CITED

ARGUMENT

I. AS DENDANT PAL'S SENTENCES WERE UNDULY HARSH, HIS SENTENCES SHOULD BE VACATED AND HE SHOULD BE GRANTED A RESENTENCING.

The State argues that because the sentence defendant received was within the applicable penalty range, this court should not find the sentence unconscionable (State's brief at 5-6). While this may generally be the law, it is not absolute, as is made clear in State v. Tuttle, 21 Wis.2d 147, 151, 124 N.W.2d 9, 11 (1963), previously cited by the defense. There is no law that says that if a sentence imposed is less than the maximum possible penalty, it cannot be unconscionable. In this case, a 20-year prison sentence for the single act of the defendant leaving the scene of an accident leading to the death of two persons is excessive.

The State asserts the seriousness of the offenses required the court to impose a harsh sentence (State's brief at 6). By their very nature, all felony cases are serious. In support of its argument, the State cites State v. Stenzel, 2004 WI App 181, 276 Wis.2d 224, 688 N.W.2d 20, a case where a defendant received a harsh sentence after killing two children in a drunk-driving accident. As the trial court considered the age of the victims, the gravity of the offenses and the public sentiment in sentencing the defendant, the court of appeals upheld the sentence as being appropriate. That case is very different than this case. In Stenzel, in imposing the harsh sentence, the trial court focused on the defendant's choice in driving while intoxicated and the importance of deterring other from driving while intoxicated. In this case, the accident was truly an accident. While defendant was arguably negligent in causing the accident, there was no gross negligence, recklessness or intentional conduct on defendant's part in killing the two young men. While there is always a need to deter persons from leaving the scene of an accident, that could have been accomplished in this case without the near-maximum sentence.

The State argues there were aggravating factors in this case (State's brief at 7-8). While defendant cannot argue to the contrary, again, the crime is the decision to leave the scene of the crime, not the killing of the victims. Nothing about that flight from the scene of the accident justifies a near-maximum sentence.

II. AS DEFENDANT'S TWO CONVICTIONS FOR LEAVING THE SCENE OF AN ACCIDENT, CAUSING DEATH ARE MULTIPLICITOUS, ONE OF HIS CONVICTIONS SHOULD BE VACATED.

Defendant Pal concedes the law set forth in State v. Hartnek, 146 Wis.2d 188, 430 N.W.2d 361 (Ct.App. 1988), resolves the issue raised. For the reasons previously argued, the reasoning of that decision should be revisited and reversed. If reversal is not granted, defendant Pal intends to petition for review to the Wisconsin Supreme Court to overturn Hartnek.

Defendant Pal attempted to raise this issue in the context of ineffective assistance of counsel. The trial court denied defendant's request for a Machner hearing. Whether in the context of ineffective assistance of counsel or in the interest of justice, defendant Pal has a right to challenge the legitimacy of the court of appeals' decision in Hartnek. Otherwise, improvidently decided cases in the court of appeals could never been corrected, especially through an ineffective assistance of counsel argument. The State seems to suggest defendant is without a vehicle to challenge the law set forth in Hartnek (State's brief at 10). The State argues defendant's argument for relief in the interest of justice is not developed (State's brief at 10).

Succinctly, defendant Pal asserts Hartnek is wrongly decided and that when a fatal accident involves the death of more than one person, the defendant can only be convicted of leaving the scene of an accident once for the reasons previously argued. It is not anyone's interest to have a criminal defendant convicted of two counts if the facts of his case only support one conviction. While the court of appeals is bound by the Hartnek decision, the Wisconsin Supreme Court can overturn that decision.

CONCLUSION

For the reasons set forth above, and as previously argued, defendant should be granted the relief sought.

Dated: 12/28/2015

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CERTIFICATION AS TO FORM AND 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 this brief is 1313 words.

Dated: 12/28/2015

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Philip J. Brehm

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 Rule 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 and that 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: 11/15/2015

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Philip J. Brehm