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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case No. 17 AP 931-CR

ERIC W. POIRIER,

Defendant-Appellant.

APPEAL FROM ORDER FOR INCOME ASSIGNMENT FOR
UNPAID FINES AND OTHER FINANCIAL PENALTIES
ENTERED 3 APRIL 2017, AND FROM LETTER ORDER DENYING
DEFENDANT-APPELLANT'S OBJECTION ISSUED 10 MAY 2017
IN CHIPPEWA COUNTY CIRCUIT COURT, BRANCH III,
THE HONOURABLE STEVEN R. CRAY,
CIRCUIT COURT JUDGE, CHIPPEWA COUNTY, PRESIDING.

BRIEF & APPENDIX OF PLAINTIFF-RESPONDENT

RESPECTFULLY SUBMITTED:

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BRIEF & APPENDIX OF PLAINTIFF-RESPONDENT

POSITION ON ORAL ARGUMENT & PUBLICATION

Oral Arguments and publication are not appropriate for this matter. The issues are not complex and the issues are controlled by established case law.

STATEMENT OF THE CASE

This matter commenced on 3 March 2003 with the filing of a criminal complaint in Branch II of the Chippewa County Circuit Court, the Honourable Thomas

Sazama, Circuit Court Judge, presiding. (R 2). An initial appearance was held on 4 March 2003.(R 5). On 20 June 2003, Mr. Poirier entered a plea, and sentencing was adjourned for him to complete a treatment program, Intoxicated Driver's Intervention Program (IDIP).(R 12). Sentencing occurred on 17 December 2003. At the time of sentencing, Mr. Poirier was sentenced to 30 days in jail, a fine and cost and surcharge totaling \$1,184.00, license revocation, AODA and Driver Safety Plan. (R 28).

On 26 February 2004, Mr. Poirier's licenses was suspended for failure to pay.(R 33). On that same date, a Judgment for Unpaid Fine/Forfeiture/Other was filed. (R 34).

On 3 April 2017 the Honourable Steven R. Cray, Circuit Court Judge, signed an Order for Income Assignment for \$1,184.00 to be collected from Mr. Poirier's prison account for this unpaid amount.(R 35; App 104-105). On the bottom of that order was a notice to Mr. Poirier that if he objected, he could file a written objection.

On 25 April 2017, Mr. Poirier's written objection was filed.(R 36). Therein Mr. Poirier claimed this amount of money was held satisfied by Judge Cameron during a sentencing hearing in Chippewa County case

number 04 CF 19. He referred to page 41 of the transcript for that hearing. Mr. Poirier further argued that the statutes of limitations apply and that a civil commitment cannot be based upon criminal punishment and that it the statute of limitations.

In a letter dated 10 May 2017, Judge Cray found that Judge Cameron did not hold that the fine was satisfied. Judge Cray ruled that Judge Cameron's ruling only applied to the jail portion of the sentence. He did not refer to any of Mr. Poirier's other arguments. (R 37; App. 106).

Mr. Poirier filed a Notice of Appeal on 17 May 2017. (R 38). The State received his brief on 18 August 2017.

STANDARD OF REVIEW

While not listed as a separate issue by Mr. Poirier, this court needs to address Judge Cray's factual finding that Judge Cameron did not hold that the fine and court cost portion of his sentence was not satisfied. A trial court's determination of fact will not be overruled unless it is clearly erroneous. See **State v. Williams**, 2002 WI 1, ¶20, 249 Wis.2d 492, 509, 637 N.W.2d 733, 741.

Mr. Poirier stated issue claims that the Order

allowing this withholding of funds from his account is illegal and constitutes an *ex post facto* law increasing the punishment imposed on him in 04 CF 19, and violates the statues of limitations. Whether a statute is punitive is a question of law the court reviews de nova. ***State v. Radaj***, 2015 WI App. 50, ¶ 12, 363 Wis.2d 633, 641, 866 N.W.2d 758, 762.

ARGUMENT

I. JUDGE CRAY'S FINDING THAT JUDGE CAMERON'S STATEMENT ON THE RECORD IN CHIPPEWA COUNTY CASE NUMBER 04 CF 19 DID NOT FORGIVE THE FINE AND COSTS ASSESSED AGAINST MR. POIRIER IN THIS CASE WAS NOT CLEARLY ERRONEOUS.

Pursuant to sec. 973.05(4)(b), Stats., Judge Cray issued an order allowing the unpaid fine and costs in this matter to be withdrawn from Mr. Poirier's prison account. (R 35; App. 104-105). Mr. Poirier filed a written objection. He cites to statements made by Judge Cameron during Mr. Poirier's sentencing hearing in Chippewa County case number 04 CF 19¹.

¹ The state has attached in the Appendix a partial transcript of this hearing showing the full conversation between Judge Cameron and Mr. Poirier reference this matter. The state is aware that this transcript is technically not part of the record. However, not including this partial transcript would limit this court to the incomplete conversation cited by Mr. Poirier. Given Judge's Cray response to Mr. Poirier's objection, it appears Judge Cray reviewed the transcript before making his written decision. See ***Parr v. Milwaukee Building & Construction Trades, AFL-CIO***, 177 Wis.2d 140, 145 n.4, 501 N.W.2d 858, 859 n.4 (Ct.App.1993).

Mr. Poirier claims that these statements by Judge Cameron relieved him of any further obligation to pay the fine and cost ordered in this case. A thorough reading of the conversation demonstrates the opposite.

The primary topic of this conversation dealt with the jail portion of the sentence imposed by Judge Sazama in case number 03 CT 61. The topic was initiated by Mr. Poirier's question related to a 30 day sentence in case number 04 CF 25 for a Failure to Report to Jail sentence². Mr. Poirier states he had been in jail for nine months and wanted the case dismissed. Later in the conversation, the court and the prosecutor determined that this case was the case to which Mr. Poirier was referring. (App. at 109).

The judge and the prosecutor both assumed that Mr. Poirier had completed the thirty days in jail while in custody.(App. at 109-110). While the prosecutor and the judge both used the word sentence, the overall context on the conversation shows that the use of this word related only to the jail portion of the sentence.

Mr. Poirier's assertion at page 3 of his brief that no fine was ordered is contrary to the record

² Mr. Poirier did have a case numbered 04 CF 24 for Failure to Report to Jail. That matter was dismissed on 15 February 2005 on motion of the prosecutor.

before the court. Mr. Poirier is aware of that a fine and costs were imposed in this case since he filed an Application for Time to Pay in the circuit court on 17 December 2003. (R 30; App. 102)³.

In his letter, Judge Cray made a factual finding that this conversation in 04 CF 19 related only to the jail portion of the sentence in this matter and not to the financial portion.⁴ Judge Cray found that Judge Cameron was ordering that the jail portion of the sentence in 03 CT 61 was satisfied. Nothing in the totality of the transcript would suggest any other interpretation. Judge Cray's finding that Judge Cameron did not forgive the financial portion of Mr. Poirier's sentence is not clearly erroneous and should be upheld.

II. NEITHER OF MR. POIRIER'S SENTENCES WERE INCREASED BY THE WAGE ASSIGNMENT ORDER SIGNED BY JUDGE CRAY ON 3 APRIL 2017 AND THUS NO INCREASE IN PENALTY WAS ORDERED. THE APPLICATION OF SECTION 973.05(4)(B), STATS., DOES NOT CONSTITUTE AN EXPOST FACTO LAW AS APPLIED TO MR. POIRIER.

Following his guilty plea to Operating a Motor Vehicle with a Prohibited Alcohol Content, Mr. Poirier

³ Mr. Poirier did not arrange to have a transcript of the sentencing hearing made part of the record.

⁴ The state assumes that the letter from Judge Cray was intended to be an order and constitutes a final order for purposes of this appeal.

was sentenced to thirty days jail and to pay a fine and costs totaling \$1,184.00, as well as other mandatory requirements. Due to Mr. Poirier's failure to pay this fine and cost, it was reduced to a judgment. (R 34; App 103). This amount remained unpaid until 3 April 2017 when Judge Cray signed the wage assignment order to allow funds to be taken out of Mr. Poirier's prison account pursuant to sec. 973.05(4)(b), Stats., to pay this debt. (R 35; App. 104-105).

This order was applicable to Chippewa County case 03 CT 61 only. This order was intended to collect this financial obligation previously imposed by the court in 2003 as part of the mandatory sentence imposed for a third offense Operating with a Prohibited Alcohol Concentration. Sec. 973.05(4)(b), Stats. This order did not impose any additional penalty in case 03 CT 61, nor a new one that did not exist when the offense was committed. This order does not raise an *ex post facto* issue. 2015 WI App 15, ¶ 12, 363 Wis. 2d at 641, 866 N.W.2d at 762.

Neither was the sentence in Chippewa County 04 CF 19 impacted by Judge Cray's Order of 3 April 2017. The order itself specifies it is applicable to case number 03 CT 61. Mr. Poirier has produced no court generated

document to prove otherwise. This order did not and could not imposed any additional penalty in 04 CF 19⁵.

Judge Cray's order for income assignment, which is applicable only to this case does not constitute an "attack" on the sentences imposed in 04 CF 19. Contrary to Mr. Poirier's assertion at page 5 of his brief, this order does not "open the doors" and allow him to once more argue his convictions and sentences in Chippewa County case 04 CF 19 are illegal.

The circumstances in this case are not comparable to the situation in which a defendant seeks to withdraw his plea from one crime in a case before the court and in effect is implicitly seeking to withdraw his pleas in other cases which are not before the court. **State v. Lange**, 2003 WI App 2 ¶ ¶ 31-32, 259 Wis. 2d 774, 790-791, 656 N.W.2d 480, 487-488. The sentence imposed in 04 CF 19 is not before this court.

Nor did this order constitute a new prosecution or civil action. No violation of any statute of limitations has occurred, be it civil or criminal. Sec. 973.05(4)(b), Stats., allows a court order to be issued

⁵ This claim seems to come from a notation in a document Mr. Poirier numbered page 9 of his appendix. The state believes this notation is referring to the case number for which Mr. Poirier is in prison. This document is not a court documents and did not increase any sentence imposed in Chippewa County case 04 CF 19.

in cases where the defendant owes money without the necessity of commencing a separate legal action to collect that money. Any argument claiming that Judge Cray's order violated any statute of limitations is without merit.⁶

CONCLUSION

WHEREFORE, THE STATE, for the reasons stated above, respectfully requests this court to deny Mr. Poirier the relief he has requested.

Dated this 18th day of September 2017.

Respectfully,

Roy La Barton Gay
Asst. District Attorney
Atty. # 1002794

⁶ The state has attempted to address all of Mr. Poirier's arguments, and does not want any failure to address an issue to be mistaken as a concession. For example, at pages 9-10 of his brief, he asks the court to impose a sanction for Contempt of Court for a violation that does not appear to have occurred. He concludes his brief by stating that the claim is too stale, which may or may not relate to the Statute Limitations argument.

APPENDIX

Document	R	App.
Judgment of Conviction	31	101
Application for Time to Pay	30	102
Judgment for Unpaid Fines	34	103
Income Assignment Order	35	104-105
Letter Order dated 10 May 2017	37	106
Transcript(partial) Sentencing 04 CF 19		107-113

CERTIFICATION

I certify that this Brief and Appendix conforms to the rules contained in sec. 809.19(8)(b) and 809.62(4), Stats., for a brief produced using the following font:

Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on right and left margins with 1 inch margin on top and bottom. The length of this brief is 10 pages, including this one.

Dated this 18th day of September 2017.

ROY LA BARTON GAY
Assistant District Attorney
Attorney # 1002794

**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (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 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.

Dated this 18th day of September 2017.

Roy La Barton Gay
Assistant District Attorney
Attorney # 1002794