

STATE OF WISCONSIN
COURT OF APPEALS OF WISCONSIN
DISTRICT IV

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

APPEAL CASE NO. 2018AP481

COUNTY OF LAFAYETTE,

Plaintiff-Respondent,

VS.

IAN D. HUMPHREY,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

STATEMENT ON ORAL ARGUMENT.....	2
STATEMENT ON PUBLICATION.....	2
ARGUMENT.....	3
I. THE DEFENDANT’S APPEAL HAS NO LEGAL OR FACTUAL BASIS ENTITLING HIM TO RELIEF.....	3
CONCLUSION.....	4
CERTIFICATION OF BRIEF.....	5
CERTIFICATION OF ELECTRONIC FILING.....	6
CERTIFICATION OF MAILING.....	7

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Respondent, County of Lafayette, states that oral argument is not warranted. This case is not appropriate for publication because the Plaintiff-Respondent believes the Defendant-Appellant has not raised sufficient issue with arguable merit.

ARGUMENT

I. THE DEFENDANT’S APPEAL HAS NO LEGAL OR FACTUAL BASIS ENTITLING HIM TO RELIEF.

Humphrey’s appellate brief sets for no legal basis for the findings requested. Additionally, the brief is without a factual basis as no transcript exists to support the statements made by Humphrey. In Appeal No. 2016AP1579, this Court already addressed whether the defendant’s appeal has arguable merit and found it did not. R. at 67. That determination came from Humphrey’s appeal of the circuit court’s determination to deny a waiver of transcript fees. R. at 67. The Court of Appeals affirmed the circuit court decision denying Humphrey’s request for a waiver of transcript fees. R. at 67. In doing so, this Court already determined that Humphrey failed to provide any basis upon which to conclude that his appeal has arguable merit. R. at 67.

Despite being denied a waiver of the transcript fees, Humphrey moved forward with this appeal without obtaining the transcripts necessary to support his appeal. Thus, this Court is left with no record or factual basis in which to grant the requests Humphrey is making. Humphrey admits in his brief that without the transcripts, he will not receive a meaningful appeal. Yet, he provided no transcripts to supplement the record. As this Court already determined in 2016AP966, “It was Humphrey’s ‘responsibility to ensure completion of the appellate record’ Jensen v. McPherson, 2004 WI

App 145, ¶6 n.4, 275 Wis. 2d 604, 685 N.W.2d 603, and the record shows that he neither obtained any transcripts nor made the required showing for him to obtain transcripts without paying the fees for their production.” Court of Appeals Decision August 16, 2018, Appeal No. 2016AP966.

When the record is incomplete in regard to an issue on appeal, this court assumes that the missing material supports the circuit court’s ruling. See Fiumefreddo v. McLean, 174 Wis.2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993) (citing Court of Appeals Decision August 16, 2018, Appeal No. 2016AP966). Here, Humphrey continues to make arguments that are not supported by the record or any transcript of the proceedings, which are necessary to entitle him to relief. Humphrey’s arguments have no citations to the record or a transcript making it impossible for the court to actually review the issues.

Additionally, Humphrey provides no legal basis to support his positions or entitle him to relief. Humphrey should not be allowed to relitigate this matter after a determination was already made by both the Court of Appeals and Supreme Court. Nor should he be allowed to file appeal after appeal with new issues that should have been raised at the outset but that have already be determined by the court of appeals. Instead, Humphrey loses one appeal and initiates another.

First, Humphrey’s argument discusses “local rules” but there is no legal or factual basis that would support relief from Humphrey based upon his

statements. Second, Humphrey suggests the trial court setting a hearing about his inability to pay is somehow professional misconduct entitling him to relief, but fails to provide any legal basis for this court to give him the relief he is seeking. Third, Humphrey sets forth an argument suggesting he was entitled to an alternative sentence just because the law allows it, but states no legal basis that required the trial court to do so that would entitle him to relief. Fourth, Humphrey asserts the suspension he received, which is not in the record or documented within this appeal for the court's review, exceeds that allowed by law. The record does not contain information to support this conclusion. Thus, all four of Humphrey's argument fail to provide a legal or factual basis that entitle him to relief.

CONCLUSION

This Court should uphold the trial court's judgment because Humphrey's appeal has no arguable merit and the brief provides no factual or legal basis. Therefore, the County of Lafayette respectfully requests that this Court uphold the decision of the trial court.

Dated this 26th day of September, 2018.

Respectfully submitted,

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CERTIFICATION

I certify 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 points for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The length of the brief is 694 words.

Dated this 26th day of September, 2018.

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CERTIFICATE OF ELECTRONIC FILING

I certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wisconsin Statutes sections 809.19(12)(f) and 809.19(13)(f) and that the content of the electronic copy of the Respondent's brief is identical to the content of the paper copy of the Respondent's brief.

A copy of this certificate was been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 26th day of September, 2018.

Jenna Gill
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CERTIFICATION OF MAILING

I certify that this brief and accompanying documents was mailed via the United States Postal Service to the Wisconsin Court of Appeals, District IV and to all parties associated with this action on September 26, 2018.

Dated this 26th day of September, 2018.

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