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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

11-16-2018

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v. Appeal Nos. 2018-AP-484

Tracy E. McCarthy,

Defendant-Appellant.

On Appeal of a finding of guilt to an ordinance offense
entered in the Circuit Court of Waukesha County, The
Honorable Lee S. Dreyfus, Presiding.

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Whether the defendant can appeal alleged constitutional defects after entering a guilty plea to an amended ordinance charge.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent (“state”) submits that oral argumentation is unnecessary because the issues can be set forth fully in the briefs. Publication is unnecessary as the issues presented relate solely to the application of existing law to the facts of the record.

STATEMENT OF THE CASE

On March 30, 2016, a criminal complaint was filed in Waukesha County Circuit Court against the above defendant alleging one count of misdemeanor Disorderly Conduct contrary to Wisconsin Statute section 947.01(1). (R. 2)

On July 11, 2017, the state, by below signed counsel, moved to amend the misdemeanor to an ordinance violation contrary to Waukesha County ordinance section 13-102(c)(8). (R. 35) The defendant did not object and the circuit court granted the state's motion. (R. 35) The defendant then entered a guilty plea to the amended ordinance violation and a forfeiture and costs totaling \$330.50 was ordered. (R. 35)

ARGUMENT

I. THE DEFENDANT FORFEITTED HIS APPELLATE CLAIMS WHEN HE ENTERED A GUILTY PLEA TO THE DISORDERLY CONDUCT CITATION

The guilty plea forfeiture/waiver rule is the rule that a guilty, no contest, or *Alford* plea generally/in most instances waives all nonjurisdictional defects or defenses, including alleged constitutional claims/violations of constitutional rights. *State v. Smiter*, 2011 WI App 15, ¶ 9, 331 Wis.2d 431, 435, 793 N.W.2d 920; *Harris v. Milwaukee City Fire & Police Commission*, 2012 WI App 23, ¶ 11, 339 Wis.2d 434, 440; *State v. Hampton*, 2010 WI App 169, ¶ 23, 330 Wis.2d 531, 543-44, 793 N.W.2d 901; *State v. Kelty*, 2006 WI 101, ¶ 18, 294 Wis.2d 62, 73, 716 N.W.2d 886. This rule applies even though the defendant attempts to preserve an issue by raising it in the circuit court. *State v. Asmus*, 2010 WI App 48, ¶ 3, 324 Wis.2d 427, 430, 782 N.W.2d 436.

Because the defendant in this case entered a guilty plea to an amended ordinance charge, the claims he makes regarding pretrial and trial issues have been waived. This Court should not address the

merits of those claims based on the defendant's waiver through his guilty plea.

CONCLUSION

For all the reasons stated above, the State respectfully requests that the Court affirm the circuit court's extension of defendant's probation.

Dated this ____ day of November, 2018.

Respectfully,

Abbey Nickolie
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar Number 1092722

CERTIFICATION OF BRIEF

I hereby certify that this document conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c), for a brief with proportional serif font. The length of this brief is 322 words long.

Dated this ____ day of November, 2018.

Abbey Nickolie
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar Number 1092722

**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 at Waukesha, Wisconsin this ____ day of November, 2018.

Abbey Nickolie
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar Number 1092722