

FILED
11-16-2020
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
Case No. 2020AP001081CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.
ALEXANDREA C.E. THRONDSO
Defendant-Appellant.

On Appeal from a Judgment of Conviction entered
in the Sauk County Circuit Court,
The Honorable Michael Screnock, Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT

KATHLEEN HENRY
WI Bar No. 1118591
Dairyland Public Interest Law
P.O. Box 3219
Madison, WI 53704
314-262-0679
khenry@dairylandpublicinterest
law.com

Attorney for Defendant-Appellant

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
ARGUMENT.....	1
I. The circuit court erred in sentencing Ms. Thronson because the court deprived Ms. Thronson of her Due Process right to be sentenced by an impartial court by conducting an independent investigation of her prior to sentencing	1
II. The circuit court erred in sentencing Ms. Thronson because the court deprived Ms. Thronson of her Due Process right to be sentenced based upon accurate information	2
CONCLUSION.....	2
CERTIFICATION AS TO FORM AND LENGTH	3
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)	4

TABLE OF AUTHORITIES

	Page
 CASES	
<i>In Interest of Hezzie R.</i> , 219 Wis.2d 848, 882, 580 N.W.2d 660 (1998)	1
<i>State v. McQuay</i> , 154 Wis.2d 116, 124, 452 N.W.2d 377 (1990).....	1
 CONSTITUTIONAL PROVISIONS	
U.S. Const. Amend. 5	2
U.S. Const. Amends 14.....	2
Wis. Const. art. 1, § 8	2
Wis. Const. art. 1, § 14	2
 OTHER SOURCES	
Wis. Code of Judicial Conduct, SCR 60.04(1)(g)	1

ARGUMENT

I. The circuit court erred in sentencing Ms. Thronson because the court deprived Ms. Thronson of her Due Process right to be sentenced by an impartial court by conducting an independent investigation of her prior to sentencing.

Respondent relies on *State v. McQuay*, 154 Wis.2d 116, 124, 452 N.W.2d 377 (1990), for the statement that “It is against public policy to withhold information from a sentencing court” (Resp. Br. 7).

Respondent also relies on *In Interest of Hezzie R.*, 219 Wis.2d 848, 882, 580 N.W.2d 660 (1998), for the statement that “Considering juvenile contacts, even if they do not result in adjudications of delinquency, are proper factors for sentencing courts to consider” (Resp. Br. 7).

The holdings in these cases are contrary to the prohibition found in SCR 60.04(1)(g) that a judge may not independently investigate facts in the case.

No matter how this Court reconciles these competing doctrines, in this case the circuit court gave the appearance of bias in that a reasonable person would believe the court had determined its sentence on the basis of the facts the court uncovered concerning Ms. Thronson’s juvenile record, rather than the offenses she was currently charged with. Many of those case numbers proved to not be offenses, but the damage was done. The court’s listing of the case numbers, coupled with its unsupported and uncalled-for statements about Ms. Thronson “playing the race card,” would cause a reasonable person to conclude

that the circuit court failed to give Ms. Thronson a fair trial.

II. The circuit court erred in sentencing Ms. Thronson because the court deprived Ms. Thronson of her Due Process right to be sentenced based upon accurate information.

Respondent argues that appellant, “argues without citation that the court considered 23 different adjudications” (Resp. Br. 12). However, in her brief, appellant quoted the court as saying, “the reason I outlined all of the cases that I had found at the plea hearing was to make sure that the parties – both parties knew what the Court had seen and what it may be relying on for purposes of sentencing.” (App. Br. 14; 61:12, 13; A158, 159).

This is an admission from the court that it is considering these adjudications, and that it is giving explicit attention to the misinformation. (App. Br. 14). Therefore, the circuit court violated Ms. Thronson’s right to Due Process.

CONCLUSION

For the reasons stated above, Ms. Thronson respectfully requests that the court vacate the sentence and remand the matter to the circuit court for resentencing before a different judge.

Dated this 16th day of November, 2020.

Respectfully submitted,

Electronically signed by Kathleen Henry

KATHLEEN HENRY

WI Bar No. 1118591

Dairyland Public Interest Law

P.O. Box 3219

Madison, WI 53704

314-262-0679

khenry@dairylandpublicinterestlaw.com

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 422 words.

Dated this 16th day of November, 2020.

Electronically signed by Kathleen Henry

KATHLEEN HENRY

WI Bar No. 1118591

Dairyland Public Interest Law

P.O. Box 3219

Madison, WI 53704

314-262-0679

khenry@dairylandpublicinterestlaw.com

Attorney for Defendant-Appellant

**CERTIFICATION OF COMPLIANCE
WITH 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 § 809.19(12) Stats.

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate electronic Filing Project, Order No. 19-02.

A copy of this certificate has been served with this brief filed with the court and served on all opposing parties by electronic filing.

Dated this 16th day of November, 2020.

Electronically signed by Kathleen Henry

KATHLEEN HENRY

WI Bar No. 1118591

Dairyland Public Interest Law

P.O. Box 3219

Madison, WI 53704

314-262-0679

khenry@dairylandpublicinterestlaw.com

Attorney for Defendant-Appellant