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COURT OF APPEALS

State of Wisconsin
Court of Appeals
District III

City of Rhinelander,

Plaintiff-Respondent,

v

Cases No. 2020AP001466

& 2020AP001467

Zachery T. LaFave-LaCrosse

Defendant-Appellant.

Respondent's Brief

Appeal from Oneida County Circuit Court

The Honorable Michael H. Bloom, Circuit Court Judge

Oneida County Circuit Court Case Nos. 20TR68 & 20TR69

Prepared by:

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Table of Authorities

Case Law

Girouard v Cir. Ct. for Jackson Cty., 155 Wis2d 148, 454N.W.2d 792 (1990) 6,7

State v Allen, 274 Wis.2d 568, 204 WI 106,682 N.W.2d 433 (2004) 8

Statutes

814.29 Wis Stats (2019-20) 5

809.14(1) Wis. Stats (2019-20) 8

Statement on Oral Argument and Publication

Oral argument is not necessary. The issue is not complex and the briefs should fully develop the parties' positions.

This case does not merit publication; the relevant law is well settled.

Statement of Facts

The appellant filed a Motion for Waiver of the Cost of Preparing the Transcript on June 26, 2020. The motion alleged that the defendant is indigent but did not address the merits of the appeal. (P-App 13). On July 17, 2020, the trial court denied the appellant's motion ruling that it was not allowed under sections 809.01 to 809.26 Stats. The trial court did not address the merits of the defendant's appeal. (P-App 27).

Argument

THE APPELLANT HAS FAILED TO ESTABLISH THAT HE HAS AN ARGUABLY MERITORIOUS CLAIM FOR RELIEF ON APPEAL AND THAT ANY ISSUES OF ARGUABLE MERIT NECESSITATE A TRANSCRIPT FOR APPELLATE REVIEW

The city concedes that Section 814.29 Wis. Stats. allows for the waiver of transcript fees on appeal. However, in order to obtain a waiver of transcript costs on appeal, the appellant must meet three criteria: 1) he is indigent; 2) he has an arguably meritorious claim for relief on appeal and 3) that any issues of arguable merit necessitate a transcript for appellate review.

Girouard v Cir. Ct. for Jackson County, 155 Wis. 2d 148, 454 N.W. 2d 792 (1990).

The appellant's Motion for Waiver for the Costs of Preparing the Transcript contains no assertion as to the merit of the appeal nor does he present an argument on the necessity of the transcript. It speaks only to indigency. (P-App 25).

In its order of August 13, 2020, this court advised the appellant that "In addition to establishing one's indigency, a party must establish that he or she has an arguably meritorious claim for relief on appeal and that any issue of arguable merit necessitates a transcript for appellate review. (P-App 34).

Despite the advice of this court, the appellant has not amended his motion nor has he attempted to supplement the record. The only apparent reference to the merits in the appellant's brief, is the assertion "the trial court is aware that the testimony is the only evidence that supports the Trial Courts (sic) findings of facts of judgment at trial hearing 3/13/2020 and Motion hearing 5/15/2020." (A-Bf 12).

In interpreting this position, the appellant appears to be arguing that his conviction cannot be based solely on testimony. However, he offers no basis in law or logic why this must be true.

In its order of August 22, 2020, the trial court noted that the appeal is apparently based solely on a disagreement with the court's findings of fact based on its credibility determinations. The trial court noted "A circuit court's credibility determinations will not be overturned on appeal unless the testimony upon which they are based is inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts" (P-App 40-41).

Although it is not necessary for this argument to establish the appellant's knowledge, it is clear that he had notice of the need to demonstrate the merit of the appeal and the high burden he would need to meet on appeal. To this though, he offers the mere assertion that his conviction was based solely on testimony.

The trial court's order denying the defendant's Motion for Waiver of the Costs of Preparing the Transcript did not address the merit or lack of merit of the defendant's claim for relief. Notwithstanding, this court should affirm the trial court's order because the appellant's motion on its face provides no basis by which this court could find that the appellant has met his burden in establishing the second and third criteria set forth in Girouard. There is no need to remand the case back to the trial court for findings on the

second and third criteria because the appellant's motion does not provide specific facts upon which the relief he seeks could be granted. Wis Stats 809.14(1); State v Allen, 274 Wis.2d 568, 682 N.W.2d 433 (2004).

Despite the defendant having been put on notice by this court and the trial court.

Conclusion

The court should affirm the trial court because the appellant's motion fails to establish that he has an arguably meritorious claim for relief on appeal and that any issues of arguable merit necessitate a transcript for appellate review.

Respectfully submitted this the 4th day of February 2021

Steven M. Michlig

Electronically signed

Attorney for the City of Rhinelander

Plaintiff-Respondent

State Bar # 1003770

Form and Length Certification

I hereby certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced with proportional serif font.

The length of this brief is 944 words.

Dated this the 4th day of February 2021

Steven M. Michlig / Electronically signed

Certification of Mailing and Electronic Filing

I certify that 3 copies of this brief were deposited with the United States Postal Service for delivery to the Clerk of the of Wisconsin Supreme Court and Court of Appeals by first class mail on February 4, 2021

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I further certify that the brief electronically filed on February 4, 2021 is identical to the paper submissions.
