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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case No. 2021AP1445-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

AYODEJI J. ADEREMI,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE MILWAUKEE COUNTY CIRCUIT
COURT, THE HONORABLE JOSEPH R. WALL,
PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

In July 2018, the State charged Defendant-Appellant Ayodeji J. Aderemi with multiple counts related to his repeated sexual assaults of his two step-daughters. In August, the State electronically and timely filed an information listing four specific charges with the Milwaukee County Circuit Court. However, the clerk responsible for processing the document failed to accept it into the circuit court's system until early December. Aderemi argued that this failure entitled him to dismissal of the charges without prejudice, but the circuit court deemed that the information was timely filed, and the case moved to trial, where Aderemi was convicted of three separate offenses.

This Court should affirm Aderemi's convictions. Despite his arguments to the contrary, the State properly and timely filed the information with the court. Any administrative error by the court should not be imputed to the State and should not result in Aderemi receiving the substantial windfall of a new trial.

ISSUE PRESENTED

Did the circuit court properly conclude that the State timely filed the information?

The circuit court denied Aderemi's request for dismissal, concluding that the State timely filed the information on August 6, 2018.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This Court can resolve this case by applying straightforward legal principles to the facts.

STATEMENT OF THE CASE

In a criminal complaint dated July 24, 2018, the State charged Aderemi with four counts: two counts each of first-degree sexual assault of a child and repeated sexual assault of a child. (R. 1:1–2.) The charges stemmed from Aderemi’s repeated abuse of his wife’s daughters. (R. 1:2–3.)

A preliminary hearing was held on August 1, 2018. (R. 41.) An arraignment then took place on August 6, 2018. (R. 42.) At the arraignment, the court noted that there had been “a new information filed.” (R. 42:2.) The State agreed, saying that it “did file a signed and dated information.” (R. 42:2.) Aderemi’s counsel “acknowledge[d] receipt of a copy of the information, waive[d] its formal reading, and enter[ed] pleas of not guilty.” (R. 42:2.)

At a hearing on Aderemi’s bond conditions held on October 2, 2018, the clerk noted that although the CCAP system showed that the information had been filed, the court did not seem to have a copy of the file. (R. 48:7.) The State asked Aderemi’s counsel to “acknowledge there was an Information filed” and that the defense had been given a copy in order to avoid any jurisdictional issues. (R. 48:7.) Defense counsel acknowledged receiving a copy, saying that he had “a vague recollection of” being shown an electronic copy and entering a plea. (R. 48:8.) Counsel stated that he did not “see a problem at all.” (R. 48:8.)

Before the final pre-trial hearing, however, defense counsel raised a concern over the information not being included in the e-file system.¹ (R. 45:2.) At the final pre-trial hearing, counsel said that the “information apparently was in

¹ From the context of the hearing transcript, it appears that Aderemi filed a motion related to the information before the hearing. (R. 45:2.) However, Aderemi included no such motion in the appellate record.

the system, waiting for someone else to I guess accept it for filing, and that just didn't happen." (R. 45:3.) Counsel further acknowledged that there was no "surprise or prejudice" to the defense as a result of the information not being included in the e-filing system. (R. 45:4.)

The court noted that the clerk had looked into what happened with the information, "and the district attorney did, in fact, file it on August 6th of 2018." (R. 45:4.) The court explained that "the clerks for each judge have an electronic system which things are filed and they get it first. From there, they then post it to the docket." (R. 45:4.) The court continued, "[the information] was filed by ADA Torbenson and went into Judge Conen's clerk's electronic system without the clerk then posting it or formally filing it onto the docket." (R. 45:4.) The court then noted that its own clerk was able to go into Judge Conen's system and "file" the information—hyperlinked to August 6, 2018—on December 7, 2018. (R. 45:5.) The court reviewed the CCAP entries and noted that the entries stated that the information was filed as of the arraignment on August 6, 2018. (R. 45:5–6.) After reviewing and distinguishing several cases, the court said, "[i]t strikes me that this matter - - that the information was, in fact, filed on August 6th, 2018." (R. 45:12.)

Defense counsel stated that he did not object to the court's finding that the clerk "retrieved this document that had been misdirected." (R. 45:13.) However, counsel argued that the actual filing date was, at the earliest, December 7th—beyond the 30 day window for the information to be filed. (R. 45:13.) In response, the court again referred to the CCAP record and noted that "the public would have notice that there was an information in the case and that it [was] filed" based on the entry for August 6th. (R. 45:15.) The court therefore denied Aderemi's request for dismissal without prejudice and ordered that the trial would proceed as planned the following morning. (R. 45:16.)

At trial, a jury convicted Aderemi of one count of first-degree sexual assault of a child and both counts of repeated sexual assault of the same child. (R. 35:1.) The court sentenced Aderemi to a total of 14 years of initial confinement and five years of extended supervision. (R. 35:1–2.) Aderemi now appeals.

STANDARD OF REVIEW

The interpretation of a statute and its application to the facts of a particular case is a question of law that an appellate court reviews de novo. *See, e.g., State v. Wittrock*, 119 Wis. 2d 664, 669, 350 N.W.2d 647 (1984).

ARGUMENT

The circuit court properly denied Aderemi’s request for dismissal without prejudice.

A. A document that is e-filed is considered “filed” on the day the party submitted it as long as the court clerk accepts the document for filing.

The issue in this case requires statutory interpretation. In interpreting a statute, a court “begins with the language of the statute. If the meaning of the statute is plain, [courts] ordinarily stop the inquiry.” *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). “Statutory language is given its common, ordinary, and accepted meaning” *Id.* Moreover, statutory language “is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.* ¶ 46. But a court is not free to disregard the plain, clear language of the statute. *Id.*

Several statutes guide this Court's resolution of the issue presented. Wisconsin Stat. § 971.01(2) provides, in pertinent part, that an information "shall be filed with the clerk within 30 days after the completion of the preliminary examination or waiver thereof Failure to file the information within such time shall entitle the defendant to have the action dismissed without prejudice." Wisconsin Stat. § 971.26, meanwhile, provides that "[n]o indictment, information, complaint or warrant shall be invalid, nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant."

This case also concerns Wis. Stat. § 801.18—Wisconsin's e-filing statute. Of note in this section is Wis. Stat. § 801.18(4)(c), which states, "[i]f the clerk of court accepts a document for filing, it shall be considered filed with the court at the date and time of the original submission, as recorded by the electronic filing system."²

B. The State timely filed the information as required by statute.

The record is uncontradicted that on August 6, 2018, the State electronically signed the information, provided a copy to Aderemi, and submitted it to the Milwaukee County Circuit Court's e-filing system. (R. 17:2; 42:2; 45:5.) The

² The electronic filing statutes were amended in 2021 to account for the expansion of e-filing into appellate matters. The quoted language of Wis. Stat. § 801.18(4)(c) did not change. *See* 2021 Wisconsin Court Order 0006, §§ 39, 40 (July 1, 2021). The amendments also added Wis. Stat. § 801.18(4)(am), which reads, in part: "A document is considered filed on a particular day if the submission is completed by 11:59 p.m. central time, as recorded by the electronic filing system, so long as it is subsequently accepted by the clerk of court upon review." *See id.* § 37.

public-facing CCAP record reflects the same.³ The only question in this case is whether the circuit court clerk's failure to stamp the information as "filed" on that date requires the State to re-try Aderemi. It does not.

According to Wis. Stat. § 801.18(4)(c), the information is considered "filed" on the day that it was submitted to the electronic filing system, as long as the clerk subsequently accepted it. Here, the information was submitted on August 6th. The clerk subsequently accepted it.⁴ Thus, regardless of the filing date stamped on the information, the legal filing date of the information—by operation of the e-filing statute, Wis. Stat. § 801.18—was August 6, 2018.

Contrary to Aderemi's assertion, there are numerous pieces of evidence in the record supporting this determination:

- The CCAP record for the arraignment shows that the information was filed and a copy was served on Aderemi (R. 45:15);
- The transcript of the arraignment includes a statement by the State that it filed a signed and dated information

³ The CCAP record that the court referenced is not included in the appellate record, but it is publicly available online. See Wisconsin Circuit Court Access, Milwaukee County Case Number 2018CF003444, *State of Wisconsin vs. Ayodeji J. Aderemi*, available at <https://wcca.wicourts.gov/caseDetail.html?caseNo=2018CF003444&countyNo=40&index=0&mode=details>. This Court can take judicial notice of CCAP records. See, e.g., *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶ 5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

⁴ Notably, the relevant statutes do not provide a window for how long a clerk has to accept a document for filing. Under the statute, as long as the submitted document is eventually accepted by the clerk, it is "filed" for statutory purposes on the day it was submitted. See Wis. Stat. § 801.18(4)(c).

and a statement by defense counsel acknowledging receipt of the information (R. 42:2);

- The information itself was signed by Deputy District Attorney Matthew J. Torbenson on August 6, 2018 (R. 17:2);
- At the bond condition hearing on October 2, 2018, defense counsel again acknowledged receiving the information at the arraignment and stated that he saw no problem at all with respect to the information (R. 48:8); and
- The court's clerk was able to access the information—which was signed on August 6, 2018—and accept it for filing through Judge Conen's system on December 7, 2018 (R. 45:5).

Aderemi's arguments to the contrary are unavailing. He contends, for example, that the date stamp on the information "is conclusive as to the date of filing unless" the State provides evidence—in the form of testimony—that the filing occurred on some other date. (Aderemi's Br. 6.) But the cases Aderemi provides for his assertion do not concern e-filing and therefore cannot account for the effect of Wis. Stat. § 801.18(4)(c). Because the information in this case was electronically filed, the statute controls, not any of the cases Aderemi cites. But Aderemi does not so much as cite the e-filing statute, much less discuss it or offer any argument why this Court should disregard Wis. Stat. § 801.18(4)(c).

Here, the circuit court cited multiple reasons why it was clear that the information was filed on August 6th. Nothing in the record contradicts that assessment, nor does Aderemi even pretend that it does. Short of requiring the court clerk and the prosecuting attorney to become fact witnesses in the case, there is nothing else the court could have done to support its factual finding. That finding was not clearly erroneous, as Aderemi argues. It has ample support in this

record, it is consistent with the relevant statute, and it should stand.

C. Even if the State's filing of the information did not satisfy the statute, any defect was a matter of form that did not prejudice Aderemi, and it therefore should not affect the trial proceedings.

Even if Aderemi is correct that the State failed to provide sufficient "evidence" of the information being filed on August 6th, this Court still should affirm Aderemi's convictions because any delay resulting from the clerk's failure to accept the submitted information earlier was a simple matter of form that did not prejudice Aderemi in any way. Aderemi's trial attorney acknowledged that the State provided the defense with a copy of the information on August 6th. (R. 45:2–4, 13.) Counsel further conceded that the delay between the information being provided on August 6th and being stamped as filed by the court clerk on December 7th did not cause any prejudice or surprise to the defense. (R. 45:4.) Under Wis. Stat. § 971.26, the absence of any prejudice to Aderemi means that the trial proceedings in this case should not be affected.

Aderemi's brief does not discuss Wis. Stat. § 971.26. He does cite *State v. Woehrer*, 83 Wis. 2d 696, 699, 266 N.W.2d 366 (1978), for the assertion that "[t]he lack of an information . . . is not a matter of form." (Aderemi's Br. 13.) Critically, however, *Woehrer* involved a situation where no information was *ever* filed in the case. *See Woehrer*, 83 Wis. 2d at 698. Here, by contrast, even if the information was not "filed" until December 7, 2018, it was still filed before the beginning of Aderemi's trial. In fact, very little took place in the case between Aderemi's arraignment on August 6th and the information being date-stamped on December 7th. The only hearing between August 6th and December 7th was a bail/bond hearing held on October 2, 2018, at which the issue

of the submitted information not yet being accepted first arose. (R. 48:7.) The status of the information had no effect on the outcome of Aderemi's request for the modification of his bond conditions. (R. 48:6.)

Moreover, as the circuit court noted when it denied Aderemi's motion to dismiss, the public-facing CCAP record stated that the information had been filed at Aderemi's arraignment on August 6th. Thus, there can be no argument that the public was not on notice about the charges against Aderemi throughout the pre-trial process.

In short, any delay in the technical "filing" of the information was merely a matter of form because the information was indisputably on file by the time Aderemi's trial began. Aderemi has made no showing that he was prejudiced by any delay in the filing of the information. Absent such a showing, Wis. Stat. § 971.26 dictates that the result of the jury trial should not be disturbed. This Court should therefore affirm Aderemi's judgements of conviction.

CONCLUSION

For the reasons discussed, this Court should affirm Aderemi's judgment of conviction.

Dated this 18th day of January 2022.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,475 words.

Dated this 18th day of January 2022.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 18th day of January 2022.

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