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CLERK OF WISCONSIN
COURT OF APPEALS

State of Wisconsin
Court of Appeals
District 1
Appeal No. 2021AP001445-CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Ayodeji J. Aderemi,

Defendant-Appellant.

On appeal from a judgment of the Milwaukee County Circuit Court, The Honorable Joseph Wall, presiding

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Defendant-Appellant's Reply Brief

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Argument

I. The court of appeals must soundly reject the state's contention that the information was "submitted" on August 6, 2018 because there is no evidence in the record as to the date it was submitted; and that contention is contrary to the way the electronic filing system works, as evidenced by the electronic filing statute.

The state asserts that, '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. 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.' (emphasis provided; Resp. brief p. 9)

In other words, the state's claim is that the information was electronically *submitted* on August 6, 2018, and then later *accepted by the clerk*-- that is, placed in the docket-- on December 7, 2018. According to the state, under § 801.18(4)(c), Stats., the date of *filing* is the date of *submission* as long as the clerk, at some later point, accepts the document (that is, posts it to the docket).

The state might be right, except that this is wholly dissonant with what the e-filing statute provides. § 801.18(4)(c), Stats., provides, "If 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.* The electronic filing system shall issue a notice of activity to serve as proof of filing." (emphasis provided)

In other words, the statute reflects that the electronic filing system is designed to record the date on which a document is submitted; and, then, if the clerk later accepts the document for filing, the system automatically stamps the document as having been filed on the date it was submitted.[1]

If this is how the e-filing system actually works, then it is abundantly clear that the information in this case was not actually submitted to the e-filing system until December 7, 2018. According to the statute, when a document is submitted to the e-filing system, the system *records the date of submission*; and, then, when the clerk later accepts the document, the system automatically stamps the document as having been filed on the date it was submitted, *as recorded by*

[1] In other words, a party might submit a document to the e-filing system on June 1, 2022. The system will automatically record June 1st as the date on which the document was submitted. Later, say, on July 1, 2022, when the clerk finally brings the document into the system, the system will automatically stamp the document as having been filed on June 1, 2022. This is how we know that the information in this case was not actually submitted on August 6, 2018. If it had been, then, in December when the clerk pulled it through, the system would have automatically stamped it as "filed" on August 6, 2018. Instead, the system stamped it as filed on December 7, 2018, because that was the actual date on which it was submitted.

the system, regardless of the date on which the clerk actually accepted the document for filing.

With this understanding of the e-filing system, then, if the information in this case had actually been submitted on August 6, 2018, the system would have recorded that date; and, later, when the clerk "pulled the document into the system" in December, the system would have stamped it as "filed" on August 6, 2018.

That is not what occurred here. The information was automatically stamped as having been filed on December 7, 2018. The only explanation is that the information was not submitted to the e-filing system on August 6, 2018. Rather, it was first submitted on December 7, 2018. The system recorded that date; and, later, when the clerk accepted the document for filing, the system automatically stamped it as "filed" on December 7, 2018.

This highlights the problem created when the court did not conduct an evidentiary hearing. There is no evidence in the record as to when the information was submitted. At such a hearing, the court could have received testimony about the actual workings of the electronic filing system. The electronic filing statute strongly suggests that it is impossible for a document to be submitted on August 6, 2018, but then later automatically stamped as "filed"on December 7, 2018, when the clerk pulls it through to the system.

Now, though, we are left with having to piece together the sequence of events based upon what the clerk allegedly told the judge about when the document was submitted, what the public-facing CCAP docket entry reflects, and the judge's understanding of how the e-filing system works.

As pointed out above, though, the clerk's statements and the judge's understanding of how the e-filing systems works do not comport with what § 801.18(4)(c), Stats. tells us about how the electronic filing system is designed. The system automatically records the date that a document is submitted; and, later, when the clerk accepts it, the system automatically stamps it "filed" on the date it was submitted. Were it otherwise, the system would stamp a document as "filed" on the date that the clerk accepts the document, and the parties would be left-- as we are in this case-- to piece together from circumstantial evidence the date on which the document was actually submitted to the system.

II. Untimely filing of the information is, by law, not a mere matter of form. The statute could not be clearer: the failure to timely file the information entitles the defendant to have the charges dismissed.

The state makes the remarkable assertion that, where the state files an information, but only files it late, the mandatory requirement of § 971.01(2), Stats. that the information be dismissed is subject to the "prejudice" requirement of § 971.26, Stats. The court should have little trouble discarding this suggestion.

§ 971.01(2), Stats. provides, in mandatory terms, that "Failure to file the information *within such time* shall entitle the defendant to have the action dismissed without prejudice."

As Aderemi pointed out in his opening brief, the failure to timely file an information is, by law, not a mere matter of form subject to § 971.26, Stats.[2] *See, also State v. Woehrer*, 83 Wis. 2d 696, 699, 266 N.W.2d 366, 368, 1978 Wisc. LEXIS 1016, *4

The state draws a flimsy distinction between the facts of *Woehrer* and what happened in this case. In *Woehrer* no information was ever filed. Here, the state contends, an information was filed, it just was filed late, so it should be subjected to the prejudice requirement of § 971.26, Stats.

This is a distinction without any difference. This is clear

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[2] Providing that "No 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."

from the words of the court in *Woehrer*: “The statute could not be more clear. It says, ‘Failure to file the information *within such time* shall *entitle* the defendant to have the action dismissed without prejudice.’" (emphasis provided) *Woehrer*, 83 Wis. 2d at 699, 266 N.W.2d at 368.

In effect, the state urges the court of appeals to carve out a special exception to the statute. Where an information is filed, but it is merely filed late, it is subject to the prejudice requirement of § 971.26, Stats. Only when the state completely fails to file an information is the defendant actually *entitled* to dismissal of the charges.

The statute could not be clearer, and the court of appeals should not rewrite the statute simply because the state thinks it would be inconvenient to retry Aderemi: ““Failure to file the information *within such time* shall entitle the defendant to have the action dismissed without prejudice.”

Dated at Milwaukee, Wisconsin, this 31st day of January, 2022.

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Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 1492 words.

Dated at Milwaukee, Wisconsin, this 31st day of January, 2022.

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