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SUPREME COURT**

STATE OF WISCONSIN

IN SUPREME COURT

Case Nos. 2021AP1526-CR & 2021AP1527-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RASHEEM D. DAVIS,

Defendant-Appellant-Petitioner.

PETITION FOR REVIEW

CHRISTOPHER P. AUGUST
Assistant State Public Defender
State Bar No. 1087502

Office of the State Public Defender
735 N. Water Street - Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
augustc@opd.wi.gov

Attorney for Defendant-Appellant-
Petitioner

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ISSUES PRESENTED

1. Is a dismissal without prejudice a “final disposition” for the purposes of determining whether a circuit court has lost subject matter jurisdiction in a criminal case?

The circuit court, while acknowledging that case law on the subject was “scant,” concluded, “[j]eopardy had not attached, and therefore, the court was not without subject matter jurisdiction.” (R1 43:3; 43:6).¹ (App. 23; 26).

The court of appeals affirmed.

2. Does a criminal court have the “inherent authority” to revive a previously dismissed criminal case?

While the circuit court did not rely on inherent authority, the court of appeals held that circuit courts have inherent authority to reconsider a prior ruling, including a prior dismissal order.

3. If this Court accepts review and agrees that the verdict in Case No. 2019CF4828 was invalid due to a loss of jurisdiction, Mr. Davis asks this

¹ This is a consolidated case. Accordingly, counsel will use “R1” to refer to the record in 2021AP1526-CR and “R2” to the record in 2021AP1527-CR. When documents appear in more than record, counsel will cite to their location in R1 for the sake of readability.

Court to also review his intertwined plea withdrawal claim from Case No. 20CF774.

Neither court addressed this issue on the merits, having concluded that there was nothing invalid about the jury verdict in 19CF4828.

CRITERIA FOR REVIEW

Under controlling Wisconsin law, the circuit court's criminal subject matter jurisdiction "attaches when the complaint is filed." *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). "Once criminal subject-matter jurisdiction attaches, it continues until a final disposition of the case." *Id.*

The problem, however, is that this dispositive legal definition—"final disposition"—is almost wholly undefined in Wisconsin law. Simply put, while there are cases which help the reader to infer what a final disposition *is not*, there is no conclusive authority establishing what qualifies as a "final disposition" for the purposes of delineating the contours of the circuit court's subject-matter jurisdiction. The State acknowledged as much in its brief to the court of appeals, conceding that this legal term of art "does not appear to have been defined in any Wisconsin cases in this context." (State's Ct. App. Br. at 14).

This case therefore represents the first, and only, authority on point. However, despite issuing a published decision that, one hopes, would fill the precedential vacuum identified by the State, the court

of appeals' decision regrettably neglects to give a workable definition of a "final disposition."

Instead, the court of appeals rests its analysis on the facts of the underlying case, identifying case-specific factors such as the fact that the dismissal order had not been docketed and was orally rescinded a "short period of time" after it was issued. *State v. Davis*, Appeal No. 2021AP1526-CR, ¶ 19.² (App. 12-13). This fact-specific holding, in addition to being legally infirm, also fails to concretely resolve the legal issue at hand. Instead, it only raises more questions.³

Litigants in Wisconsin deserve to have the underlying question conclusively answered and to receive an authoritative definition of this hitherto undefined legal concept. Accordingly, this Court should accept review and, for the reasons that follow, hold that dismissal without prejudice is a "final disposition."

The closely related second issue in this case concerns the scope of the circuit court's inherent authority. It is a fundamental principle of our legal system that the circuit court's primary source of power is an express grant of authority from established, textually-evident sources, including most relevantly

² Recommended for publication. At present, only the Westlaw citation is available: 2023 WL 2766063.

³ For example, why is the focus on when the unelected clerk opts to "docket" the otherwise binding order from the circuit court? And how much time, in the court of appeals' view, is sufficient for a dismissal to ripen into a "final disposition?"

the Wisconsin Constitution. *State v. Schwind*, 2019 WI 48, ¶ 12, 386 Wis. 2d 526, 926 N.W.2d 742. Thus, this Court has urged lower courts to use great caution when using “inherent authority” as a means of justifying judicial action which is not strictly authorized by any textual authority. *Id.*, ¶ 15.

Here, however, the court of appeals discerned an “inherent authority” to not only rescind a prior dismissal order, but, seemingly, to resurrect the court’s jurisdiction once it is conceivably imperiled. Because this approach does not neatly fit the exercise of inherent authority as authorized in *Schwind*—and because it leads to illogical results—this Court must accept review and reverse.

Finally, Mr. Davis’ appeal also asks this Court to address his plea withdrawal issue, which centers on his allegation that he would not have pleaded in a separate criminal case but-for the entry of an invalid jury verdict in another.

STATEMENT OF FACTS

Circuit Court

This is a case involving alleged domestic violence. ARW, Mr. Davis’ former romantic partner, reported that he had battered her and stolen her phone while she was attending class at the Milwaukee Area Technical College (MATC). (R2 2:3). As a result, Mr. Davis was charged with multiple felonies in Milwaukee Case No. 2019CF4828. (R2 2:1-2).

While that matter was pending, Mr. Davis then picked up another case involving ARW, in which he is alleged to have fled from police and recklessly endangered ARW's safety while she was a passenger in a car driven by Mr. Davis. (R1 2:1). Mr. Davis therefore faced another two felony charges in Milwaukee County Case No. 2020CF774. (R1 2:1).

Case No. 2019CF4828 was scheduled to be tried first. On the selected date, and with Mr. Davis' speedy trial demand entered, the State informed the court that it was not ready to proceed. (R1 19:2). As grounds, the State averred that:

What I can tell the Court is that it appears to me that in error subpoenas did not go out, so I don't have a good record. But I also can tell the Court our contact with the victim has not been consistent.

(R1 19:2). Counsel for Mr. Davis moved to dismiss. (R1 19:2). The court, the Honorable Frederick Rosa presiding, ordered that the case was dismissed and instructed the State to "refile if they have better cooperation going forward." (R1 19:3).

The parties then went off the record to discuss scheduling in Case No. 20CF774. (R1 19:3.) When they came back on the record, the prosecutor relayed that she had been informed by the victim-witness coordinator that ARW was present for trial in 19CF4828. (R1 19:3.) The court indicated that it would recall the case later that morning to begin the trial. (R1 19:4.)

Mr. Davis was subsequently convicted of all charges in Case No. 19CF4828. (R2 13:1-5). Following the unfavorable jury verdict, Mr. Davis promptly resolved Case No. 20CF774 with a plea. (R1 24:2). He was then sentenced to a term of imprisonment. (R1 24:24).

Postconviction

Mr. Davis filed a Rule 809.30 postconviction motion. (R1 29). Relevant to this petition, he argued that the trial in 19CF4828 was a legal nullity as the circuit court lost subject matter jurisdiction once it had dismissed the case. (R1 29:3). In addition, because he only pleaded guilty in 20CF774 due to the unfavorable jury verdict in 19CF4828, Mr. Davis argued he was entitled to a hearing on a claim for plea withdrawal if the court agreed with him and vacated that jury verdict. (R1 29:7).

The circuit court, Judge Rosa presiding, entered a written decision denying the motion.⁴ (R1 43); (App. 21). The court relied heavily on foreign case law in concluding that a dismissal order did not terminate the trial court's jurisdiction. (R1 43:4-6); (App. 24-26). The court also focused on the fact that "jeopardy had not attached" at the time the dismissal order was entered. (R1 43:6); (App. 26).

⁴ The court granted a request for sentence credit which is not at issue in this petition.

Because it found that its reinstatement of the case was not legally improper, it also denied the request for plea withdrawal. (R1 43:7); (App. 27).

Court of Appeals Decision

The court of appeals affirmed. Implicitly acknowledging the lack of Wisconsin authority, the court of appeals found two foreign decisions germane to its analysis—*United States v. Green*, 414 F.2d 1174 (D.C. Cir. 1969) and *Lyles v. United States*, 920 A.2d 446 (D.C. 2007). *State v. Davis*, Appeal No. 2021AP1526-CR, ¶ 17. (App. 11-12). Relying on this persuasive authority, the court of appeals found it significant in this case that “the circuit court’s oral ruling dismissing the charges against Davis had also not yet been entered on the docket.” *Id.*, ¶ 19. (App. 12-13). Mr. Davis suffered “no appreciable prejudice” as a result of “the ongoing nature of the hearing and the short period of time that lapsed between the oral ruling dismissing the charges and the witness’s appearance that caused the matter to move forward with the trial.” *Id.* (App. 12-13). “Furthermore, it is firmly established in Wisconsin law that a circuit court has the inherent authority to reconsider its own rulings during ongoing proceedings.” *Id.*, ¶ 20. (App. 13).

Having concluded there was nothing improper about reinstating the case, the court of appeals also rejected Mr. Davis’ related plea withdrawal claim. *Id.*, ¶ 22. (App. 14).

ARGUMENT

I. This Court should accept review and hold that a dismissal without prejudice is a “final disposition” for the purposes of assessing subject-matter jurisdiction.

“Criminal subject matter jurisdiction is defined as the power of the court to inquire into the charged crime, to apply the applicable law and to declare the punishment in a court of a judicial proceeding.” *Mack v. State*, 93 Wis. 2d 287, 294, 286 N.W.2d 563 (1980).

Because the court’s subject matter jurisdiction is “conferred by law,” *Mack*, 93 Wis. 2d at 294, the court’s jurisdiction “attaches when the complaint is filed.” *Aniton*, 183 Wis. 2d at 129. “Once criminal subject-matter jurisdiction attaches, it continues until a final disposition of the case.” *Id.* “Without jurisdiction, criminal proceedings ‘are a nullity.’” *State v. Randle*, 2002 WI App 116, ¶ 18, 252 Wis. 2d 743, 647 N.W.2d 324 (quoting *Hotzel v. Simmons*, 258 Wis. 234, 240, 45 N.W.2d 683 (1951)).

The dispositive question in this case is whether a dismissal without prejudice is a “final disposition.” As the circuit court, the State, and the court of appeals have all acknowledged, there is virtually no case law on point. The legal term of art at issue, while seemingly fundamental to an understanding of subject-matter jurisdiction, remains frustratingly undefined.

As the circuit court acknowledged, *State v. Asfoor*, 75 Wis. 2d 411, 249 N.W.2d 529 (1977) is the “closest Wisconsin case on point.” (R1 43:5). *Asfoor*, however, does not resolve the question, as it merely establishes that if individual counts in a multi-count information are dismissed—but then reinstated—within the same continually existing criminal case, then the court *will* have jurisdiction. *Id.* at 424. *Asfoor* does not address the dismissal of an entire case; accordingly, this Wisconsin authority was not even discussed or addressed in the body of the court of appeals decision. *Davis*, Appeal Nos. 2021AP1526-CR, 2021AP1527-CR, ¶ 20 n.9.

Lacking Wisconsin guidance, the court of appeals rests its interpretation of Wisconsin law on cases from the District of Columbia. Yet, despite leaning heavily on those authorities—which have no inherent weight in our system of appellate review—the court of appeals has still failed to conclusively define a “final disposition.” Instead, it has merely concluded that *this* dismissal was not a final disposition; it leaves open whether dismissal orders which make it to the docket sheet or which are revisited days or even weeks later will still come within the ambit of the *Davis* “rule.”

As this is an issue of first impression for courts in Wisconsin—and because the court of appeals’ decision does not provide sufficient guidance—Mr. Davis asks this Court to accept review and to hold that a dismissal without prejudice is categorically a “final

disposition” for the purposes of assessing criminal subject-matter jurisdiction.

II. This Court should accept review and hold that circuit courts do not have inherent authority to resurrect a dismissed case when that dismissal impacts the court’s jurisdiction.

Notably, the court of appeals also provided a secondary rationale to uphold the jury verdict in 19CF4828 by asserting that resurrection of that case was somehow permitted by the circuit court’s inherent authority. *Davis*, Appeal No. 2021AP1526-CR, ¶ 20. (App. 13).

This holding is problematic, however, because it appears in tension with this Court’s recent decision in *Schwind*. *Schwind* is motivated by a textualist reading of the sources of circuit court authority; under that approach, the primary source of authority for a circuit court *must be* found within an express grant of authority from the people by virtue of our constitution. *Schwind*, 2019 WI 48, ¶ 12.

Inherent authority is “implicit” but not explicitly provided for in our constitution. *Id.*, ¶ 13. Inherent authority refers to those powers which are necessary to preserve the essential functioning of the court as a “court” is traditionally understood. *Id.*, ¶ 15. Essentially, inherent authority is a gap-filling mechanism by which the court can assume powers which are necessary to fulfill its explicitly delineated authority. *Id.* Yet, courts must also be cautious not to

endorse an overbroad reading of inherent authority as doing so risks “infringing upon the authority of the legislative or executive branches by replacing their policy preferences with our own.” *Id.*, ¶ 14.

Here, the court of appeals’ invocation of inherent authority is plainly problematic—how can a court that has arguably lost its jurisdiction have the “inherent” authority to snatch such jurisdiction back? Why should a circuit court be permitted to resurrect dismissed cases, when such dismissals would otherwise signal its loss of jurisdiction, or the power to act at all in a given matter?

Accordingly, Mr. Davis asks this Court to accept review, to revisit the problematic framing of inherent authority, and to reverse.

III. If this Court grants review, it should also review Mr. Davis’ plea withdrawal claim in Case No. 2020CF774.

Finally, Mr. Davis’ appeal also presents an argument for plea withdrawal in Case No. 2020CF774. As alleged in the postconviction motion, Mr. Davis only elected to plead guilty in Case No. 2020CF774 because he lost at trial in Case No. 2019CF4828. (R1 29:7). Because that verdict was not validly entered, he argued that this invalidity necessarily compelled an involuntary plea in the companion criminal case. (R1 29:7).

Neither the circuit court nor the court of appeals addressed this issue on the merits, having concluded

there was nothing improper about the jury verdict in 2019CF4828. However, if this Court does grant relief with respect to that case, then Mr. Davis should be entitled to a remand for a hearing on his plea withdrawal claim in the other matter.

Accordingly, this Court should also grant review on this tag-along issue in the event that it grants relief with respect to the subject-matter jurisdiction issue pertaining to the separate jury verdict.

CONCLUSION

For the reasons set forth herein, Mr. Davis asks this Court to accept review and reverse.

Dated this 20th day of April, 2023.

Respectfully submitted,

Electronically signed by

Christopher P. August

CHRISTOPHER P. AUGUST

Assistant State Public Defender

State Bar No. 1087502

Office of the State Public Defender

735 N. Water Street - Suite 912

Milwaukee, WI 53202-4116

(414) 227-4805

augustc@opd.wi.gov

Attorney for Defendant-Appellant-
Petitioner

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 2,514 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 20th day of April, 2023.

Signed:

Electronically signed by

Christopher P. August

CHRISTOPHER P. AUGUST

Assistant State Public Defender