

FILED
05-16-2023
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

Nos. 2021AP1526-CR & 2021AP1527-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RASHEEM D. DAVIS,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

JOHN A. BLIMLING
Assistant Attorney General
State Bar #1088372

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 294-2907 (Fax)
blimlingja@doj.state.wi.us

The Plaintiff-Respondent State of Wisconsin opposes Defendant-Appellant-Petitioner Rasheem D. Davis's Petition for Review on the following grounds:

1. The Petition fails to meet this Court's criteria for granting review. *See* Wis. Stat. § (Rule) 809.62(1r). Specifically, this case does not offer an opportunity to address any important legal issues, provide clarity, or harmonize the law. Notably, the Petition is devoid of any reference to this Court's criteria for review.

2. The basic premise of Davis's argument is flawed. Davis argues that the circuit court's initial act of dismissing a case against him without prejudice divested the court of subject matter jurisdiction to act in the absence of the case being re-charged. (Pet. 10–12.) But despite Davis's argument to the contrary, the law on this point could not be clearer: "Circuit courts in Wisconsin are constitutional courts with general original subject matter jurisdiction over 'all matters civil and criminal.' Accordingly, *a circuit court is never without subject matter jurisdiction.*" *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 1, 273 Wis. 2d 76, 681 N.W.2d 190 (emphasis added) (quoting Wis. Const. art. VII, § 8). All of the cases Davis cites that would suggest any sort of uncertainty on this point predate *Mikrut*. Thus, what Davis truly seeks is a decision overturning *Mikrut*, despite the fact that he never mentions it or offers any reason to think that its holding is incorrect.

3. To the extent the Petition discusses the circuit court's *power* to take certain actions following what he terms a "final disposition" of his case, it invokes a question of circuit court competency, not subject matter jurisdiction. *See City of Eau Claire v. Booth*, 2016 WI 65, ¶ 6, 370 Wis. 2d 595, 882 N.W.2d 738. Yet the Petition develops no argument regarding competency; it does not even mention the term. Indeed, as the court of appeals noted in its decision affirming Davis's convictions, Davis's reply brief to that court disclaimed the

competency question and doubled down on the question being one of subject matter jurisdiction. (Pet-App. 11.) This Court should therefore not consider the Petition as meeting the criteria for reviewing a question of competency.

4. The Petition presents an issue related to inherent authority (Pet. 12–13), but inherent authority of the type discussed is not necessary for a circuit court to exercise subject matter jurisdiction in this way. As the court of appeals decision demonstrates, circuit courts' inherent authority is simply an *additional* reason the circuit court's actions in this case were proper. (Pet-App. 13.) Review of that question is thus unnecessary to the ultimate disposition of this case.

5. Ultimately, the Petition ignores clear-cut, binding case law on the issues presented, from which the attendant issues rise, simply because the court of appeals did not base its decision on that case. This Court should not consider the court of appeals' decision to be any kind of repudiation of *Mikrut*. Instead, all the court of appeals' unpublished decision stands for is the fact that other jurisdictions have consistent notions of acceptable actions by trial courts regardless of the constitutional or statutory specifics at play in those jurisdictions. This case is simple and straightforward. The court of appeals' decision was correct. Further review is unnecessary.

For the reasons discussed, the State respectfully requests that this Court deny Davis's Petition for Review.

Dated this 16th day of May 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

John A. Blimling
JOHN A. BLIMLING
Assistant Attorney General
State Bar #1088372

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 294-2907 (Fax)
blimlingja@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 555 words.

Dated this 16th day of May 2023.

Electronically signed by:

John A. Blimling
JOHN A. BLIMLING
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the Clerk of the Wisconsin Supreme 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 16th day of May 2023.

Electronically signed by:

John A. Blimling
JOHN A. BLIMLING
Assistant Attorney General