STATE OF WISCONSIN COURT OF APPEALS DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Appeal No. 2021AP001949-CR
Circuit Court Case No. 2018CM1416

MICHAEL J. LEIGHTON,

Defendant-Appellant.

ON APPEAL FROM THE FINAL ORDER DISMISSING CASE WITHOUT PREFUDICE IN VIOLATION OF THE DEFENDANT'S SPEEDY DISPOSITION ENTRY ENTERED IN THE KENOSHA COUNTY CIRCUIT COURT, THE HONORABLE JASON A. ROSSELL, PRESIDING.

REPLY BRIEF OF DEFENDANT-APPELLANT

Conner Helvig
Attorney for Appellant
Van Severen Law Office, S.C.
316 North Milwaukee Street Suite 200
Milwaukee, WI 53202
(414)-270-0202
State Bar No. 1117052

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

ARGUMENT

I. The Circuit Court erroneously exercised its discretion in dismissing this case without prejudice.

Respondent relies on the Wisconsin Supreme Court's order of March 22, 2020, suspending jury trials during the pandemic as reason for the State's noncompliance of Wis. Stat. § 971.11(3). It was not impossible for the State to comply with Mr. Leighton's request. The Supreme Court order suspended jury trials; however, it did *not* suspend all court proceedings. "If the crime charged is a misdemeanor, the district attorney shall either move to dismiss the charge or bring it on for trial within 90 days after receipt of the request." Wis. Stat. § 971.11(3). The State could have complied with the statute simply by moving to dismiss the case within 90 days, which it obviously did not do in this case. Respondent's argument also suggests, because Mr. Leighton filed his prompt disposition during the time in which jury trials were suspended, his case is no longer eligible for prompt disposition. It further suggests, that even after jury trials resume, the time limit has already expired, and therefore, the state need not try to bring the case to trial or move to dismiss the case within 90 days of trials resuming. Is Mr. Leighton supposed to refile for prompt disposition? Should he have waited until jury trials resumed to file for prompt disposition? Both of those propositions seem ridiculous.

The Respondent over simplifies this case by arguing that because a trial could not have happened within 90 days of Mr. Leighton's request, therefore it would be unjust for the Court to dismiss the case with prejudice. In reality, the State never even had a signed writ to produce Mr. Leighton. That is the main reason for the delay. The Court also considers the victim's right to restitution among other *Davis* factors. The State clearly was not concerned about the victim and their right to restitution. This was a 2018 case, and only received attention in

2020 because Mr. Leighton filed for prompt disposition. The Court stated, "this is a case of theft in which there is allegations of thousands—of over $1,000 of loss." To assume the amount of restitution, when no formal restitution request had been made, over a year into the case, is wrong.

The Respondent also argues that as a matter of law this case it was impossible for the State to comply with the defendant's request. The Wisconsin Supreme Court order filed March 22, 2020, suspended all in person proceedings. That doesn't make compliance with the statute impossible. The State could have moved to dismiss over the case without having an in-person hearing. Cases were being held via zoom. (Cite to record.) Mr. Leighton was unable to dispose of his case in any fashion, due to the State dropping the ball in getting the writ signed. Mr. Leighton had another case, Sheboygan County Case Number 2019CF51, in which he filed for prompt disposition in May of 2020. That case was resolved in July of 2020, showing that it was *not* impossible.

The Respondent also fails to address numerous arguments made by Appellant and thus concedes the argument. (*See Charolais Breeding Ranches, Ltd. v. FPC Securities Corporation*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). A failure to refute a party's argument, constitutes a concession.) The Wisconsin Supreme Court Order didn't not directly address Wis. Stat. 971.11 either.

It is Mr. Leighton's position that the biggest factor in this case, is that the State did not make *any* reasonable attempt to comply with 971.11(3) and Mr. Leighton's request. This case spanned a total of 319 days before it was finally brought in front of the court commissioner. Well beyond the statutory time limit. Even on that day, the State did not move to dismiss, the defendant did. The State seems to take the position that because it wasn't possible to have a trial within 90 days of Mr. Leighton's request, the length and reasons for the delay beyond the time limit are irrelevant.

Dismissing this case without prejudice is unjust. Defendant's, and the community have an interest in cases being resolved timely. Perhaps this would be a different story if the State made a sincere effort to comply with the prompt disposition request, but they did not.

CONCLUSION

For the reasons stated, as well as those in the initial brief, Mr. Leighton respectfully requests that this court vacate the circuit court's order to dismiss the case without prejudice be vacated, and reversed. Additionally, we ask that the judgment entered in the refiling of this case after the dismissal, Kenosha County Case No. 2021CM177, be vacated.

Dated and filed this 14th day of February, 2022.

Electronically Signed by Conner Helvig
Attorney for the Defendant
Van Severen Law Office, S.C.
316 North Milwaukee Street Suite 200
Milwaukee, WI 53202
(414)-270-0202
State Bar No. 1117052

CERTIFICATION AS TO FORM/LENGTH

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 955 words.

Dated and filed this 14th day of February, 2022.

Electronically signed by Conner Helvig
Attorney for Appellant
State Bar No. 1117052