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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2022AP361-CR
Trial Court Case No. 2019CF000157

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

Suzanne Lee Shegonee,

Defendant-Appellant

On Appeal From an Order for Sanctions,
In the Monroe County Circuit Court,
The Honorable Richard Radcliffe, Branch III, Presiding

PLAINTIFF - RESPONDENT'S BRIEF AND APPENDIX

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Issues Presented

1. Did the Circuit Court have authority under Wis. Stat.§ 814.51 or any other authority to sanction the Defendant for her untimely resolution of her case, or for failure to abide by other orders of the Court?

2. If the Circuit court did have authority to sanction the Defendant, did the Circuit Court erroneously exercise its discretion in sanctioning the Defendant.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Respondent anticipates the issue raised in this appeal can be fully addressed by the briefs. Accordingly, Plaintiff-Respondent is not requesting oral argument. Further, publication is not warranted under Wis. Stat. § 809.23.

Argument

While the specific procedure posture of this case did not allow the Court to sanction the Defendant-Appellant under Wis. Stat. §814.51, other statutory provisions and the Monroe County Circuit Court rules provided authority for the Court to do so. In sanctioning the Defendant-Appellant, the Court properly exercised its discretion because it properly applied the law and demonstrated a rational process in reaching its conclusion that a sanction was appropriate.

I. The Circuit Court was Not Allowed to Sanction the Defendant Under Wis. Stat. §814.51 Because the Jury Trial Demand Was Withdrawn 2 Business Days Prior to the Start of the Trial

The State largely agrees with the portion of the Defendant-Appellant's Brief which argues that the Circuit Court lacked the authority to sanction the Defendant under Wis. Stat. §814.51. The State so agrees because the language of Wis. Stat. §814.51 is unambiguous:

> The court shall have discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day's juror

> fees for a jury, including all mileage costs, against either the plaintiff or defendant or to divide the cost and assess the cost against both plaintiff and defendant, or additional parties plaintiff or defendant, if a jury demand has been made in any case and if a **jury demand is later withdrawn within 2 business days prior to the time set by the court for the commencement of the trial**. The party assessed shall be required to make payment to the clerk of circuit court within a prescribed period and the payment thereof shall be enforced by contempt proceedings

Wis. Stat. §814.51. Based on the plain and unambiguous language in Wis. Stat. §814.51, the Court may only sanction a party if the jury trial demand is withdrawn within 2 days of the commencement of the trial. In the present matter the undisputed facts are that the demand was withdrawn three business days prior to the commencement of the trial. Therefore, the Circuit Court did not have the authority, under Wis. Stat. §814.51, to sanction the Defendant.

II. The Circuit Court Had Authority to Sanction the Defendant Under Other Statutory Provisions

While the Circuit court did not have authority to sanction the Defendant under Wis. Stat. §814.51, the Circuit Court did have authority to sanction the Defendant under Wis. Stat §805.03. In the Defendant-Appellant's brief an argument is made that the Circuit Court did not have the authority to sanction the Defendant under Wis. Stat. §805.03 because the Circuit Court's order regarding resolution after final pretrial stated "failure by either attorney to follow the order may result in sanctions…" (*Br. Def App. Pg* 17& 25.). In making this argument, the Defendant-Appellant ignores the plain meaning of Wis. Stat. §805.03 which provides:

> For failure of any claimant to prosecute or for failure of **any party to comply with the statutes governing procedure in civil actions or to obey any order of court**, the court in which the action is pending may make such orders in regard to the failure as are just, including but not limited to orders authorized under s. 804.12 (2) (a). Any dismissal under this section operates as an adjudication on the merits unless the court in its order for dismissal otherwise specifies for good cause shown recited in the order. A dismissal on the merits may be

> set aside by the court on the grounds specified in and in accordance with s. 806.07. A dismissal not on the merits may be set aside by the court for good cause shown and within a reasonable time.

Wis. Stat §805.03. Thus, Wis. Stat §805.03 plainly provides that a Court may sanction "for failure …….any party….. …to "obey any order of court." *Id.* Undeniably, the Defendant is a party to an action where she is the listed Defendant. Therefore, the Court has the authority under Wis. Stat. §805.03 to sanction the Defendant for failure to an obey any order of the Court.

Furthermore, the Defendant's argument that the Court lacked authority under is Wis. Stat. §805.03 to sanction the Defendant is based on an incorrect reading or interpretation of the Court's order regarding resolution after final pretrial. The Defendant-Appellant argues that because the order indicated "Failure by either attorney to follow this order may result in motions being denied or sanctions being imposed…" that only actions of attorneys could be sanctioned. The Plaintiff-Respondent disagrees with this reading and asserts the Court's order is limiting as to whose actions may lead to sanction(attorneys) not as to who may be sanctioned. Who may be sanctioned is governed by the law (any party *See Wis. Stat.* §805.03) and not modified by the order in any way. In fact not only did the order not modify *Wis. Stat.* §805.03 in any way, it cited to it as authority for sanctions.

Lastly, even if the scheduling order did not apply to the Defendant herself, Monroe County Circuit Court rules did. Paragraph 9 of Monroe County Circuit Court rule 12.045 provides:

> If a resolution has been reached at the time of the final pretrial, the defendant shall enter his/her plea at the final pretrial. If a resolution has not been reached, each side shall be prepared to certify to the Court that they have reviewed their file, contacted their witnesses, completed negotiations and are prepared to proceed to trial as scheduled with a full understanding of this rule. If a negotiated plea agreement is reached after the final pretrial hearing, the court may still allow the negotiated plea to proceed if the defendant advises the court at least 2 weeks prior to

> trial and schedules the plea hearing so it is heard at least 5 business days prior to the start of trial. If the plea is on the last possible day, it shall be completed prior to noon that day. The plea can be completed on a final pretrial calendar. Except as provided above, negotiated pleas will not be accepted absent extraordinary circumstances. Extraordinary circumstances do not include lack of adequate preparation of the case prior to the final pretrial or failure to file motions that can be deiced prior to trial. The court must be notified if there will be a dismissal at least 2 weeks prior to trial.

Monroe County Circuit Court Rules Rule 12.045 (available at https://www.wisbar.org/Directories/CourtRules/Wisconsin%20Circuit%20Court%20Rules/Monroe%20County%20Circuit%20Court%20Rules.pdf). The next paragraph clarifies that sanctions are potential response to violation of the rules:

> …Failure by attorneys or pro se defendants to follow these rules may result in sanctions being imposed pursuant to Sections 802.10(7), 814.51, and 805.03, Stats., or the commencement of contempt proceeding which may result in fines, incarceration or other orders.

Id. Similar to the Court's scheduling order, the Monroe County Circuit Court Rules do not modify any of the statutes cited, but rather clarify who's conduct may lead to a sanction. Who may be sanctioned is governed by the specific statute. In both situations, Wis. Stat §805.03, makes clear who may be sanctioned and that is "any party."

III. The Court Had Authority to Sanction The Defendant and Properly Exercised Discretion in Sanctioning the Defendant

Not only did the Court have the authority to sanction the Defendant but the court also properly exercised its discretion in sanctioning the defendant. The court properly exercised its discretion, because the Court examined the relevant facts, applies the proper standard and demonstrated at rational process in reaching a conclusion that a reasonable court could reach, just as was indicated is required in

the *Flottmeyer* v. Circuit Court for Monroe County, 2007 Wi App 36, ¶16, 300 Wis. 2d 447, 730 N.W.2d 421, case. The Court demonstrated its proper exercise of discretion by indicating the reasons beyond the sanction which demonstrated a rational process in reaching a conclusion. Furthermore the Defendant-Appellant's claims that the Court did not properly exercise its discretion have no factual basis to support the claims. There is no basis because negotiation is not conduct which is out of control of the Defendant-Appellant and the "new" offer was largely similar to previous offers.

a. Negotiation is Not Conduct Which is Out of the Control of a Defendant

Negotiation is conduct which is directly in control of the Defendant The first reason the Defendant-Appellant cites to support her claim that the Court erroneously exercised its discretion is that the Defendant-Appellant claims she had no control over negotiation and therefore sanctioning her for late negotiations is an erroneous exercise of discretion. The claim that a Defendant has no control over negotiation is patently incorrect, both in a general criminal case and in this specific case.

Looking generally at criminal cases in Wisconsin, a Defendant always has control over negotiation and a Defense attorney cannot renegotiate a plea without the knowledge and consent of a Defendant. See *State v. Woods* (173 Wis. 2d 129, 141, 496 N.W.2d 144, 148 (Wis. App 1992), *citing Boykin v. Alabama,* 395 U.S. 238, 89 S. Ct 109, 23 L.Ed 2d 274 (1969). If a Defense attorney renegotiates without the knowledge and consent of the Defendant, any plea entered based on those negations is not knowingly and voluntarily entered. *See Id.* Therefore, a Defendant has full control over negotiations, if negotiations occur without her knowledge and consent, they will not withstand appellate review. *See Id.*

Looking more specifically at this case, the procedural history of the case demonstrates that the Defendant-Appellant did have control over negotiations in this case. Interestingly the Defendant-Appellant's brief does not discuss the earlier procedural history of this case. More specifically the earlier procedural history which involved the Defendant-Appellant having a jury trial removed from the calendar because she intended on accepting a plea agreement and then later changing her mind. On April 1, 2021 counsel for the Defendant-Appellant sent a letter to the Court asking that the two day jury trial scheduled for April 15 and April 16, 2021 be taken off the calendar because the Defendant-Appellant had accepted a plea agreement. *Appendix Plaintiff Pg*. 3. The Circuit Court took the trial of the calendar and set a plea hearing on April 26, 2021. However, prior to the April 26th date, Defense counsel wrote to the Court on April 9, 2021 and indicated that the Defendant-Appellant now wanted a trial. *Appendix Plaintiff Pg*. 4 This procedural posture demonstrates that not only in a general case does a Defendant have control over negotiation but in this case specifically the Defendant-Appellant had control over the negotiation. Also of note is the fact that the Defendant-Appellant has made no offer of proof claiming that Defense counsel didn't relay offers or discus them with her. If the Defendant-Appellant had made such a claim, perhaps her claim in relation to not having control over negotiation would have more merit.

The record supports a finding that the Defendant-Appellant did have control over negotiation, therefore, a claim that the Circuit Court erroneously exercised its discretion because the Defendant-Appellant had no control over negation, is not supported by what actually happened in this case, as the Defendant-Appellant did have control over negotiation.

b. The "New Offer" was largely Similar to the Previous Offers

A Court is not bound by a joint recommendation when sentencing a Defendant, rather a court , "is required to exercise discretion to fashion a sentence, within the range provided by the legislature, which reflects the circumstances of the case and the characteristics of that particular defendant." *State v. Borrell*, 167 Wis. 2d 749, 765, 482 N.W.2d 883, 888 (1992). Given the Court is not bound by a sentencing recommendation from the parties, the "new offer" was largely similar to previous offers because it provided for the same potential maximum penalties. The fact that the "new offer" provided for a joint recommendation that was not significantly different than previous joint recommendations, further supports the Court's finding that the "new offer" was largely similar to previous offers.

i. The "New" Offer Included Pleas to Identical Charges as the March 2021 Offer Thus Exposing the Defendant-Appellant to Identical Maximum Penalties

The Defendant-Appellant attempts to claim that the Court erroneously exercised its discretion because it found that the offer which the Defendant-Appellant ultimately accepted was largely similar to previous offers. The offer the Defendant-Appellant ultimately accepted was largely similar to the March 2021 offer. Most importantly in looking at the similarity of the offers is the counts the Defendant-Appellant would plead to. The offer for what to plead to was exactly the same in the March 2021 offer and the December 2021 offer. Thus the maximum penalties she was exposed to were identical. Given a sentencing Court is not required to follow any joint recommendation on sentencing from the parties, it is inconvertibly true that the most important aspect of any plea agreement is what the maximum penalties are for the crimes a Defendant is entering pleas to. In this specific case the March 2021 offer and the "new" offer were not only similar, in relation to maximum penalties, they were identical. The similarity in

maximum penalties is not the only similarity between the "new" offer and previous offers.

ii. End Date of the Diversion Was Largely Similar

The March 2021 offer include a 30 month diversion agreement which would have ended in September of 2023 if immediately accepted. The December 2021 offer allowed for completion of the diversion by June of 2022. This is only a difference of 15 months. This similarity is also not the only similarity between the "new" offer and the previous offers.

iii. End Date of Probation Was Largely Similar

The March of 2021 offer included an offer for 2 years' probation, which would have ended in March of 2023 if the offer was accepted immediately. The December 2021 offered allowed for 12 months of probation would end in December of 2022. This is only a difference of three months. Therefore the term of probation offered was also largely similar.

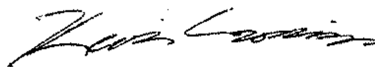
The Court properly exercised its discretion in sanctioning the Defendant-Appellant because the Court examined the relevant facts, applied the proper standard and demonstrated at rational process in reaching a conclusion that a reasonable court could reach. Furthermore, the claims of the Defendant-Appellant that the Court did not properly exercise discretion do not have a factual basis. Given negotiation is something that a Defendant controls and given the "new" offer was largely similar to previous offers, because it called for the same maximum penalties and similar end dates of probation and diversion, the Defendant-Appellants claim of improper exercise of discretion must fail.

IV. Conclusion

Both the scheduling order of the Court and the Monroe County Circuit Court Rules, allow for the Court to sanction an attorney or a party if orders of the Court are not followed. The order and the local Court rules cites to multiple statutes which give Courts authority to sanction based on failure to follow the Court's orders. While the Plaintiff-Respondent, concedes that there likely was not authority to sanction the Defendant-Appellant under Wis. Stat. §814.51 because of the specific language of that statute, the Plaintiff-Respondent, asserts there was ample authority under Wis. Stat. §805.03 for the Court to impose the sanction imposed. Given there was ample authority within the law for the sanction, the only remaining question would be whether the Court properly exercised its discretion in determining the sanction was necessary and appropriate. The Court did properly exercise its discretion because it used a rational process in coming to a reasonable decision, this though process and this decision is laid out in the record. The Defendant's claims that the Court did not properly exercise its discretion lacks basis because a Defendant does have control over the plea negotiation process and the "new" offer was largely similar to previous offers. Given the Court had authority to sanction the Defendant-Appellant, the fact the Court demonstrated a proper exercise of discretion and given the Defendant's claims to the contrary have no basis, the actions of the Court in this case were lawful and appropriate and the Defendant-Appellant's request should be denied.

For the above reasons, the Plaintiff-Respondent respectfully requests this Court affirm the Circuit Court and affirm the sanction ordered.

Dated this 4th day of October, 2022



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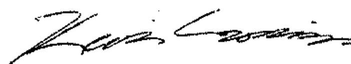
CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes or footnotes, leading of minimum of 2 points, maximum of 60 characters per full line of body text. The length of this brief is 13 pages, 2,775 words.

Dated this 4th day of October, 2022.

Respectfully submitted,



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