

FILED
01-20-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT I

Appeal Case Nos. 2022AP001202, 2022AP001203, &
2022AP1204-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
vs.
AMAN DEEP SINGH,
Defendant-Appellant.

On Appeal from Orders Entered in the Circuit Court of
Milwaukee County, Judge Jack Davila, Presiding, Denying
Various Post-Dismissal Motions

BRIEF OF PLAINTIFF-RESPONDENT

John Chisholm
District Attorney
Milwaukee County

Katrina Voge
Assistant District Attorney
State Bar No. 1119489
Attorneys for Plaintiff-Respondent

District Attorney's Office
821 West State Street, Room 405
Milwaukee, WI 53233-1485
(414) 278-4646
Katrina.Voge@da.wi.gov

TABLE OF CONTENTS

	Page
ISSUES PRESENTED	5
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	5
STATEMENT OF THE CASE	5
STANDARD OF REVIEW	7
ARGUMENT	8
I. The underlying cases against Singh were dismissed; therefore, the Court cannot use Wis. Stat. § 973.06(1)(e) to enforce payment of defense attorney’s fees	8
II. The trial court properly dismissed Singh’s cases without prejudice	9
a. The trial court does not have authority to dismiss Singh’s cases since jeopardy did not attach nor was Singh’s constitutional right to a speedy trial violated	9
b. <i>Kollross</i> does not give the trial court authority to dismiss Singh’s cases with prejudice	9
III. There is no order from which remedial sanctions would be appropriate, and issue preclusion should be decided by the municipal courts	12
a. Remedial sanctions are improper here	12
b. Issue preclusion should be directed to the municipal courts presiding over the OWI citations	13
CONCLUSION	14
CERTIFICATION	15

CERTIFICATE OF COMPLIANCE	15
---------------------------------	----

TABLE OF AUTHORITIES

CASES CITED

	Page
<i>Barker v. Wingo</i> , 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)	9
<i>City of Cedarburg v. Hansen</i> , 2020 WI 11, 390 Wis. 2d 109, 120, 938 N.W.2d 463	12
<i>Dressler v. Circuit Ct. for Racine Cnty., Branch 1</i> , 163 Wis. 2d 622, 472 N.W.2d 532 (Ct. App. 1991)	8
<i>Evans v. Luebke</i> , 2003 WI App 207, 267 Wis. 2d 596, 671 N.W.2d 304	12
<i>Neenah v. Alsteen</i> , 30 Wis.2d 596, 142 N.W.2d 232 (1966)	11
<i>South Milwaukee v. Schantzen</i> , 258 Wis. 41, 44 N.W.2d 628 (1950)	11
<i>State v. Braunsdorf</i> , 98 Wis. 2d 569, 297 N.W.2d 808,(1980)	9
<i>State ex rel. Chiarkas v. Skow</i> , 160 Wis. 2d 123, 465 N.W.2d 625 (1991)	8
<i>State v. Grant</i> , 168 Wis. 2d 682, 484 N.W.2d 370, (Ct. App. 1992)	8
<i>State v. Forrett</i> , 2021 WI App 31 (Ct. App. 2021)	7
<i>State ex rel. Keefe v. Schmiede</i> , 251 Wis. 79, 28 N.W.2d 345 (1947)	11
<i>State v. Kollross</i> , 2019 WI App 30, 388 Wis. 2d 135, 931 N.W.2d 263	9, 10, 11

State v. Kramsvogel,
124 Wis.2d 101, 369 N.W.2d 145 (1985) 12

State v. Thierfelder,
174 Wis. 2d 213, 495 N.W.2d 669 (1993) 11

Wisconsin Dep’t of Revenue v. Van Engel,
230 Wis. 2d 607, 601 N.W.2d 830 (Ct. App. 1999) 7

WISCONSIN STATUTES CITED

§ 755.045(1) 12

§ 785.03(1)(a)..... 12

§ 809.22(1)(b)..... 5

§ 809.23(1)(b)4..... 5

§ 939.74 10, 11

§ 939.74(3) 11

§ 968.02(1) 12

§ 973.06(1)(e)..... 8

§ 973.09(1g) 8

§ 976.05 9

§976.05(1) 9

ISSUES PRESENTED

The State re-frames the issues presented slightly:

1. Does Wisconsin Statute § 973.06(1)(e) require defense attorney's fees be paid if the case is dismissed?

Trial court answered yes. This Court should find that Wis. Stat. § 973.06(1)(e) only requires defense attorney's fees be paid as part of a criminal sentence.

2. Did the trial court properly dismiss Singh's case without prejudice?

Yes.

This Court should answer: yes.

3. Did the trial court properly dismiss Singh's motion for remedial sanctions?

Yes.

This Court should answer: yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On January 18, 2017, at approximately 8:22 p.m., Hales Corners Police were dispatched to a two car accident in the Village of Hales Corners. (1202R3:2)¹. Officers investigated the scene and based upon their observations, training, and

¹ For clarity, the State differentiates the three cases by the last four number of their appellate case number.

experience they believed Mr. Singh to be intoxicated. (1202R3:2). Singh was conveyed to St. Luke's Hospital where a sample of his blood was drawn for chemical analysis. (1202R3:2). An analysis conducted by Stephanie Weber shows that Singh's blood contained 0.20 g/100mL% weight of alcohol. (1202R3:2).

At that time, Singh had two prior Operating a Motor Vehicle While Under the Influence of an Intoxicant (OWI) convictions or revocations: 1) a 2005 OWI from Dane County, and 2) a 2001 Implied Consent violation from Illinois. (1202R3:2-3). Under the law applicable at the time of charging, these two occasions meant that the current incident could be charged as an OWI-third offense.

The State filed a complaint in 2017CT000341 on February 24, 2017, charging Singh with OWI-third and Operating with a Prohibited Alcohol Concentration (PAC)-third offense. (1202R3). Singh made his initial appearance on the same day, where he was released under the conditions of bail, including that he not commit any new crimes. (1202R4).

On September 11, 2017, Greenfield Police were dispatched to Red Robin for an individual sleeping in a running vehicle. (1203R31:2). Officers investigated the scene and based upon their observations, training, and experience they believed Mr. Singh to be intoxicated. (1203R31:2). Singh was conveyed to St. Luke's Hospital where a sample of his blood was drawn for chemical analysis. (1203R31:3). The results showed that Singh's blood contained 0.232 g/100mL% weight of alcohol. (1203R31:3).

The State filed a criminal complaint in 2017CM3327 on September 12, 2017. (1203R31). Therein, Singh was charged with OWI-third offense and misdemeanor bail jumping. Singh made his initial appearance on September 14, 2017, where he was released under the conditions of bail. (1203R4).

On October 27, 2018, Milwaukee Police were dispatched for a vehicle hazard blocking a lane of traffic. (1204R3:2). Officers investigated the scene and based upon their observations, training, and experience they believed Mr. Singh to be intoxicated. (1204R3:2-3). Singh was conveyed to

St. Luke's Hospital where a sample of his blood was drawn for chemical analysis. (1204R3:3). The results show that Singh's blood contained 0.236 g/100mL% weight of alcohol. (1204R3:3).

On October 28, 2018, the State charged Singh in 2018CM3479 with OWI-third offense and two counts of misdemeanor bail jumping. (1204R4).

Three years later, the cases were still pending, and Singh filed a motion to dismiss these cases on September 10, 2021. (1202R49). In the interim, this Court decided *State v. Forrett*, 2021 WI App 31 (Ct. App. 2021). This Court held that a refusal to submit to a warrantless blood draw could not count for OWI counting purposes. *Id.* Based on this decision, the trial court dismissed these cases without prejudice on February 17, 2022.

On April 01, 2022, Singh filed a Motion for Return of Bail Funds, Motion to Vacate Judgment, and Motion for Remedial Sanctions for Contempt of Court. (1202R51; 1202R52; 1202R53). On April 26, 2022, the trial court granted Singh's first motion and denied the following two in a written order. (1202R:55).

On July 06, 2022 Singh filed Motion to Modify the Dismissal Order to Dismissal with Prejudice, Motion to Reconsider Order Denying Singh's Motion to Vacate Order to Pay Attorney Fees, Motion to Reconsider Order Denying Singh's Motion for Remedial Sanctions, and Amended Motion for Remedial Sanctions. (1202R56; 1202R57; 1202R58; 1202R59). On September 29, 2022 the trial court denied all of Singh's motions.

On December 02, 2022, Singh filed this appeal.

STANDARD OF REVIEW

This case does not have any disputed facts. Therefore, the questions presented in this case consist only of questions of law, which this court reviews *de novo*, without deference to the trial court's determination. *See, e.g., Wisconsin Dep't of*

Revenue v. Van Engel, 230 Wis. 2d 607, 601 N.W.2d 830 (Ct. App. 1999).

ARGUMENT

I. The underlying cases against Singh were dismissed; therefore, the Court cannot use Wis. Stat. § 973.06(1)(e) to enforce payment of defense attorney’s fees.

The State concedes that Singh was ordered to pay defense attorney’s fees pursuant to Wis. Stat. § 973.06(1)(e). (1202R:19:1). The statute citation for the authority to pursue these costs relates to sentencing. A trial court may require repayment of certain attorney fees as part of a sentencing decision. *See, e.g.*, Wis. Stat. §§ 973.06(1)(e) (attorney fees “payable to the defense attorney by the county or the state” may be ordered as an item of costs); 973.09(1g) (as a condition of probation, defendant may be required to “reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case”).

However, such costs are taxable against Singh only as part of a sentence. *State v. Grant*, 168 Wis.2d 682, 683, 484 N.W.2d 370, 370 (Ct. App. 1992).² Since these cases were dismissed, the circuit court could not use Wis. Stat. § 973.06(1)(e) to enforce this cost. The decision requiring repayment must therefore be reversed.

² There are other times recognized by courts where the county must bear the cost of an appointed attorney. *See State ex rel. Chiarkas v. Skow*, 160 Wis. 2d 123, 141, 465 N.W.2d 625 (1991) (holding that counsel appointed “for the benefit of the court, not for the benefit of the individual... should be paid by the county”); *State ex rel. Dressler v. Circuit Ct. for Racine Cnty., Branch I*, 163 Wis. 2d 622, 633, 472 N.W.2d 532 (Ct. App. 1991) (“Where the service of counsel is indispensable to the efficient operation of the court, and the appointment of counsel is not for the benefit of the individual, the county of venue can be required to pay the compensation set by the court.”).

II. The trial court properly dismissed Singh's cases without prejudice.

a. The trial court does not have authority to dismiss Singh's cases since jeopardy did not attach nor was Singh's constitutional right to a speedy trial violated.

The law is unambiguous in that “only section 976.05(1), Stats., gives trial courts the power to dismiss a case with prejudice. Otherwise, dismissals prior to the attachment of jeopardy are without prejudice.” *State v. Braunsdorf*, 98 Wis. 2d 569, 574-75, 297 N.w.2d 808, 811 (1980). The only other avenue to dismiss with prejudice is where the defendant has been deprived of his constitutional speedy trial right. *See id.*³

There is no dispute that Singh was not serving a sentence; therefore, these were not cases where Wis. Stat. § 976.05 applied. The record is also quite clear that no jury or witnesses were sworn at a trial, so jeopardy did not attach. Consequently, the circuit court was without authority to dismiss Singh's cases with prejudice.

b. *Kollross* does not give the trial court authority to dismiss Singh's cases with prejudice.

Singh argues that *State v. Kollross*, 2019 WI App 30, 388 Wis. 2d 135, 931 N.W.2d 263 provides trial courts with “statutory authority” to dismiss with prejudice. (Singh's Br., 7).⁴ Therefore, “cases dismissed due to an expiration of statute of limitations are to be with prejudice.” (Singh's Br., 8).

In *Kollross*, Kollross was arrested on May 28, 2011 for OWI. *State v. Kollross*, 2019 WI App 30 ¶ 2, 388 Wis. 2d 135, 137, 931 N.W.2d 263, 264. The case was initially prosecuted in the City of West Allis Municipal Court as an OWI- first offense. *Id.* Kollross made an initial appearance on July 18, 2011. *Id.* Following her conviction, Kollross appealed the matter to the Milwaukee County Circuit Court. *Id.* Because the City of West Allis failed to timely produce its witness for the

³ Singh has not made a claim of a violation of his speedy trial rights, so the State will not analyze the *Barker* factors. *See Barker v. Wingo*, 407 U.S. 514, 530-32, 92 S. Ct. 2182, 2192-93, 33 L. Ed. 2d 101 (1972).

⁴ The State is using page number assigned by efilings.

scheduled court trial, the circuit court dismissed the matter without prejudice on April 17, 2013. *Id.* The citation was reissued and, following a motion for substitution of the municipal court judge, prosecution was reinitiated in Wauwatosa Municipal Court. *Id.*

While the May 28, 2011 OWI-first offense was pending, Kollross was arrested for another OWI offense in Washington County on January 26, 2012. *Id.* at ¶ 3. The January 26, 2012 offense was charged as an OWI-first offense. *Id.* Kollross pled guilty in the Washington County matter and was convicted of OWI-first on July 11, 2014. *Id.* Consequently, the Wauwatosa Municipal Court dismissed the pending OWI-first citation for lack of subject matter jurisdiction. *Id.*

On February 5, 2015, the State issued a criminal complaint, charging Kollross with an OWI-second offense for the May 28, 2011 incident. *Id.* at ¶ 4. Kollross moved to dismiss the complaint, alleging that the three-year statute of limitations for misdemeanor crimes as set forth in Wis. Stat. § 939.74 had passed for the May 28, 2011 incident. *Id.* The statute provides as relevant:

- (1) Except as provided in subs. (2) and (2d) and s. 946.88(1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

...

- (3) In computing the time limited by this section, the time... during which a prosecution against the actor for the same act was pending shall not be included. A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.

Wis. Stat. § 939.74

The State opposed the motion, arguing that the statute of limitations for the May 28, 2011 offense was tolled while the matter was pending. *Id.*

The circuit court denied Kollross's motion stating that a municipal ticket equated with a summons. *Id.* at ¶ 10. This Court ordered that the State's prosecution be dismissed with prejudice because the statute of limitations for the offense to be charged in the circuit court had expired. *Id.* at ¶ 12. This Court held that the statute of limitations applicable to the criminal proceedings was never tolled as to the commencement of OWI criminal proceedings in 2015. *Id.* at ¶ 10.

Kollross is incompatible with the facts in front of us. In *Kollross*, the pending OWI offense was a non-criminal municipal citation that was in front of the municipal court. Consequently, there was no complaint or summons to file to begin to toll the time limits. In contrast, Singh's pending offenses were criminal charges that were in front of the circuit court. Wis. Stat. § 939.74 tolls the time limits for the criminal prosecution from the time the criminal complaint is filed. *See* Wis. Stat. § 939.74(3). In addition, the trial court found probable cause for each of Singh's OWI offenses.

Kollross is also inapplicable here because there was considerable delay in prosecuting Kollross's citation because the City of West Allis failed to adequately prepare for trial before the circuit court and the City of Wauwatosa did not promptly proceed. *Kollross*, 2019 WI App 30, ¶ 11. In this case, there was no delay by prosecution. There was a change in the law. This Court's decision in *Forrett* required Singh's criminal cases be dismissed and referred back to the municipal court since the State lacked the requisite prior convictions to make Singh's charges misdemeanors.

There may be an issue with the municipal statute of limitations but that issue was not in front of the trial court, nor is it an issue for this Court to decide.⁵ This Court cannot rule

⁵ The Supreme Court has consistently recognized that "a proceeding to enforce a municipal ordinance is a civil action." *State v. Thierfelder*, 174 Wis. 2d 213, 221, 495 N.W.2d 669, 673 (1993) (citing *Neenah v. Alsteen*, 30 Wis.2d 596, 601, 142 N.W.2d 232 (1966); *South Milwaukee v. Schantzen*, 258 Wis. 41, 43, 44 N.W.2d 628 (1950); *State ex rel. Keefe v. Schmiede*, 251 Wis. 79, 84, 28 N.W.2d 345

on the municipal citations because “[the municipal court has exclusive jurisdiction over an action in which a municipality seeks to impose forfeitures for violations of municipal ordinances of the municipality that operatives the court...” Wis. Stat. § 755.045(1); *City of Cedarburg v. Hansen*, 2020 WI 11, ¶ 26, 390 Wis. 2d 109, 120, 938 N.W.2d 463, 48, *opinion modified on reconsideration*, 2020 WI 45, ¶ 26, 391 Wis. 2d 671, 943 N.W.2d 544.

If the statute of limitations has run, then dismissal with prejudice is proper. In this case, the only statute of limitations at issue is the one for the criminal Operating While Intoxicated, which was tolled by the filing of the criminal complaints. Jeopardy did not attach to Singh’s cases nor was there a violation of Singh’s right to a speedy trial. The dismissal was without prejudice because there is no valid legal basis to dismiss these charges with prejudice. Therefore, the trial court properly dismissed Singh’s cases without prejudice.

III. There is no order from which remedial sanctions would be appropriate, and issue preclusion should be decided by the municipal courts.

a. Remedial sanctions are improper here.

Remedial sanctions under Wis. Stat. § 785.03(1)(a) are sanctions imposed for the purpose of terminating a continuing contempt of court. *Evans v. Luebke*, 2003 WI App 207, ¶ 22, 267 Wis. 2d 596, 671 N.W.2d 304. The evidence must support findings that the contemnor engaged in intentional disobedience, resistance, or obstruction of the authority, process, or order of a court. *Id.* at ¶24. The circuit court was correct in its original decision on sanctions: “[t]he court’s dismissal orders in these cases (without prejudice) did not preclude the filing of municipal OWI citations in Hales Corners, and therefore, the municipal citations do not amount to a contempt of court.” (1202R55:5). Singh concedes that the trial court’s “dismissal orders do not legally prevent the named contemnors from filing new first offense OWI charges against Singh in various courts across Wisconsin regarding these

(1947); *State v. Kramsvogel*, 124 Wis.2d 101, 117, 369 N.W.2d 145 (1985)). This is in contrast to the criminal proceeding commenced by the filing of a criminal complaint. See Wis. Stat. § 968.02(1).

incidents...” (Singh’s Br., 11). Accordingly, the filing of municipal OWI citations was not in violation of the dismissal order – without prejudice – because it manifestly did not bar that action.

b. Issue preclusion should be directed to the municipal courts presiding over the OWI citations.

Singh argues that the trial court’s dismissal without prejudice precludes prosecutors from arguing that the statute of limitations has not expired in the municipal courts. (Singh’s Br., 11). This is the wrong forum to raise that argument. This is an issue for the municipal courts presiding over the OWI citations to decide.

Singh confuses the difference between the statute of limitations for the trial court and for the municipal court. The circuit court did not determine that further OWI-first offense prosecutions would violate the statute of limitations. The circuit court did not and could not make that determination, as previously stated, because the trial court does not have jurisdiction over OWI-first offenses. Singh fails to point in the record where the trial court allegedly ruled on the statute of limitations question for the municipal OWI citations. In addition, the trial court dismissed the cases without prejudice so prosecutors are within their rights to pursue citations for the OWI-first offenses.

There was no order from any court so no individual, or entity, could have violated an order that does not exist. If there is an issue of preclusion, then that is for the municipal court presiding over the OWI-first to decide. Consequently, there are no grounds for remedial sanctions.

CONCLUSION

For the above reasons, the State respectfully requests the Court deny Singh's motions.

Dated this 20th day of January, 2023.

Respectfully submitted,

JOHN CHISHOLM
District Attorney
Milwaukee County

Electronically Signed by:

Katrina Voge
Katrina Voge
Assistant District Attorney
State Bar No. 1119489
Attorneys for Plaintiff-Respondent
Katrina.Voge@da.wi.gov

P.O. Address:

Milwaukee County District Attorney's Office
821 West State Street- Room 405
Milwaukee, Wisconsin 53233-1485
(414) 278-4646
Attorneys for Plaintiff-Respondent.

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b), (bm) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2540.

Dated this 20th Day of January, 2023.

Electronically Signed by:

Katrina Voge

Katrina Voge

Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

A copy of this brief will be mailed to Singh at:

5685 W. Upham Avenue

Greenfield, WI 53220

Dated this 20th day of January 2023.

Electronically Signed by:

Katrina Voge

Katrina Voge

Assistant District Attorney