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COURT OF APPEALS

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2022AP001270-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JONATHON S. GEIGER,

Defendant-Appellant.

Appeal from a Judgment of Conviction and an
Order Entered in the Barron County Circuit Court,
the Honorable Maureen D. Boyle, Presiding

BRIEF OF
DEFENDANT-APPELLANT

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STATUTES CITED

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ISSUE PRESENTED

Mr. Geiger was placed on probation in 2015. Later, in 2017, his probation was revoked and a sentencing after revocation hearing was scheduled. The Department of Corrections erroneously released Mr. Geiger from custody prior to that hearing and he did not appear. Consequently, a warrant was issued. Mr. Geiger was subsequently arrested in Arizona and extradited back for sentencing after revocation. After Mr. Geiger was sentenced, the state filed a motion requesting that the circuit court order Mr. Geiger to pay \$3,264.40 in extradition costs. The circuit court granted that motion.

Did the circuit court exceed the scope of authority granted by § 973.06(1)(a) when it ordered Mr. Geiger to pay the cost of extraditing him for the sentencing after revocation hearing?

Circuit court answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Neither oral argument nor publication is requested. The briefs should adequately set forth the arguments and publication will likely be unwarranted as the issue presented can be decided on the basis of well-established law.

STATEMENT OF THE CASE AND FACTS

On July 14, 2014, the state filed a criminal complaint charging Jonathon S. Geiger with one count of lewd and lascivious behavior and one count of exposing genitals or pubic area. (1:1). The case was eventually resolved with a plea agreement, pursuant to which Mr. Geiger pled guilty to Count 2, exposing genitals, in exchange for the state agreeing to dismiss and read-in Count 1, as well as a separate case. (28:3; 61:1-2).

The circuit court accepted Mr. Geiger's plea on June 24, 2015, a presentence investigation report was ordered, and the matter was set over for sentencing. (28:13).

On September 17, 2015, the circuit court withheld sentence and placed Mr. Geiger on probation for three years. (14:1; 34).

Mr. Geiger's probation was subsequently revoked and a sentencing after revocation hearing was scheduled for July 5, 2017. (19; 127). Mr. Geiger, however, had been erroneously released from custody prior to that hearing and did not appear. (127:2-4; 143:11). A warrant for his arrest was issued. (91; 140:9).

In July of 2021, Mr. Geiger was arrested in Arizona and extradited back to Wisconsin. (148:9-10). Sentencing after revocation was held on September 28, 2021. The circuit court imposed one and a half years of

confinement and two years of extended supervision. (106:1; 108).

At the hearing, in addition to the maximum sentence, the state requested that the cost of transporting Mr. Geiger from Arizona be ordered and reduced to judgment. (108:36). The circuit court expressed doubt as to whether Mr. Geiger should be responsible for those costs and whether they could be added to the judgment. (108:36-37). In response, the prosecutor asked for time to provide the court with some authority supporting its request. (108:37). Thereafter, the state filed a motion to modify the judgment of conviction to include the cost of extraditing Mr. Geiger from Arizona, citing Wis. Stat. § 973.06(1)(a) as authority for the court to do so. (109).

The circuit court addressed the issue at several hearings and eventually granted the motion, ordering Mr. Geiger to pay \$3,264.40 in extradition costs. (128; 143; 145; 144; App. 5-21). The court explained its position that “arrest” in § 973.06(1)(a) was not “limited solely to [Mr. Geiger’s] initial arrest.” (143:7-9; App. 12-14). It stated:

So, you know, the plain language of the statute allows the Court to include in its discretion the fees and disbursements of the agent appointed to return the defendant from another state or country. And I think that would include the Sheriff’s Department when they transport somebody back from another state. And I think it’s an interesting question. And [defense counsel] makes, I think, a valid point. But I cannot see the distinction between an arrest preconviction and an arrest postconviction.

(143:8-9; App. 13-14). The circuit court also found that § 973.06(1)(a) applies because Mr. Geiger had notice of the hearing, did not appear, was picked up on the court's arrest warrant, and brought back from another state. (143:12-14; App. 17-19). Finally, the circuit court explained that it didn't think that "Barron County should be responsible" for the costs incurred due to the Department of Corrections' error in releasing Mr. Geiger. (143:12; App. 17).

The circuit court signed an order making Mr. Geiger responsible for the costs. (128; App. 5). An amended judgment of conviction adding the costs of extradition was also filed. (130; App. 3-4).

This appeal follows.

ARGUMENT

The circuit court lacked authority to order Mr. Geiger to pay the costs of extraditing him for sentencing after revocation; the order must be vacated.

The circuit court acted without authority when, long after sentencing, it ordered that Mr. Geiger be responsible for paying the costs to extradite him from Arizona for his sentencing after revocation hearing. The language of the statute is clear. The court may impose extradition costs connected with the arrest, preliminary hearing and trial of a defendant; not those incurred after trial and after the initial sentencing hearing. Further, the circuit court was required to

impose costs during the sentencing hearing; they could not be imposed in a separate and subsequent order. Consequently, the order requiring Mr. Geiger to pay extradition costs must be vacated.

The costs which may be imposed on a criminal defendant after conviction are set forth in § 973.06(1), and include extradition expenses. *See* Wis. Stat. § 973.06(1)(a); *State v. Perry*, 215 Wis. 2d 696, 711, 573 N.W.2d 876. The statute “details those costs taxable against a defendant and prohibits the imposition of any others.” *State v. Amato*, 126 Wis. 2d 212, 215, 376 N.W.2d 75 (Ct. App. 1985). In relevant part, it states:

Except as provided in s. 93.20, the costs, fees, and surcharges taxable against the defendant shall consist of the following items and no others:

- (a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

Wis. Stat. § 973.06(1)(a). The plain language of the statute, therefore, prohibits imposition of costs and fees incurred to transport a defendant from another state for sentencing after revocation, as such fees are incurred after the trial and prosecution of the defendant has concluded.

Whether the circuit court had authority under § 973.06(1)(a) to order Mr. Geiger to pay the extradition costs is a question of law this court reviews de novo. *State v. Peterson*, 163 Wis. 2d 800, 802, 472 N.W.2d 571 (Ct. App. 1991); *State v. Ferguson*, 202 Wis. 2d 233, 237, 549 N.W.2d 718 (1996). “[S]tatutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain,’” the inquiry ordinarily stops there. *State ex. Rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. Further, “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd results.” *Id.*, ¶46.

The language of § 973.06(1)(a) is clear and unambiguous; it allows circuit courts to impose the costs of extraditing a defendant from another state or country to be prosecuted. It does not allow the imposition of such costs incurred in connection with sentencing after revocation.

This court, and the Wisconsin Supreme Court, have interpreted § 973.06(1) on many occasions and in many different contexts. It has consistently held that “[t]he clear and unambiguous language of [§ 973.06] provides for the taxation of costs against the defendant only if the costs fit within one of the categories enumerated in the statute.” *Peterson*, 163 Wis. 2d at 803-804; *See also Ferguson*, 202 Wis. 2d at 237-238 (“By its plain language, then, the costs taxable against

a defendant under Wis. Stat. § 973.06(1)(c) are limited to the items enumerated therein.”). Specifically, “[c]osts the state incurs through necessary disbursements and fees made in the arrest or prosecution of the defendant may be assessed against the defendant.” *Peterson*, 163 Wis. 2d at 804.

Absent from the items enumerated in the statute is a provision allowing for the cost of transporting a defendant from another state for sentencing after revocation. Rather, the plain language of the statute gives the circuit court discretion to impose the “fees and disbursements of the agent appointed to return the defendant from another state” in connection with the “arrest, preliminary examination and trial of the defendant.” The events are listed in chronological order – arrest, preliminary examination and trial – and end with the trial of the defendant. Costs incurred in connection with a sentencing after revocation hearing are, therefore, prohibited.

This reading of the statute is supported by the context in which the language is used, as well as a review of surrounding statutes. All of the costs which may be taxed under § 973.06(1) are costs related to the crime for which the defendant was convicted or the preliminary hearing and trial in the case. *See* § 973.06(1)(allows the court to order costs for buy money, attorney fees, fees and travel of witnesses for preliminary examination and trial, etc.). None of the costs listed relate to fees or disbursements incurred after the defendant has been convicted.

Further, the costs allowed by statute are considered a component of the criminal disposition the circuit court imposes. *Amato*, 126 Wis. 2d at 216. This court has held that the statute does not allow those costs, including the fees associated with extradition, to be imposed in an order separate from the sentence. *State v. Grant*, 168 Wis. 2d 683, 484 N.W.2d 370 (Ct. App. 1992); *Perry*, 215 Wis. 2d at 712; *See also State v. Campbell*, 2006 WI 99, ¶68, 294 Wis. 2d 100, 718 N.W.2d 649 (“Wisconsin Stat. § 973.06 authorizes a court to impose certain costs, fees, and surcharges upon a defendant as part of his sentence.”). If the costs allowed by statute must be ordered during the sentencing proceeding, as part of the disposition or sentence, they necessarily cannot include those costs incurred in connection with events after sentencing, such as extraditing a defendant for sentencing after revocation.

In *Grant*, this court explained that “costs are taxable against a defendant as part of the sentence.” *Grant*, 168 Wis. 2d at 684. It reached this conclusion based on the plain language of § 973.06(1), as well as § 973.07, which provides remedies in the event the costs “are not paid ... as required by the sentence.” *Id.* at 695; Wis. Stat. § 973.07. This court, therefore, found that an order requiring Grant to pay attorney’s fees, which was a separate order from the sentence, had to be reversed. *Id.*

Further, in *Perry*, this court vacated an order requiring Perry to pay extradition costs. Relying on *Grant*, it held that the circuit court “lacked authority

to impose these additional costs after Perry had been sentenced.” *Perry*, 215 Wis. 2d at 712 (noting that, in *Grant*, it held that “costs could not be taxed in an order subsequent to and ‘separate from the sentence.’”).

Similar to the defendant in *Perry*, Mr. Geiger’s sentencing occurred on September 17, 2015, at which time he was placed on probation and ordered to pay \$163 in court costs. (14:1). *See Id.* A judgment of conviction containing those terms was filed the next day. (14:1). It was not until six years later that a separate order requiring Mr. Geiger to pay the costs at issue was entered. That order was entered subsequent to, and separate from the sentence and was, therefore, clearly contrary to the authority provided by statute. *See Perry*, 215 Wis. 2d at 712.

Should this court consider the sentencing after revocation hearing to be a sentencing proceeding at which costs may be imposed (something Mr. Geiger disputes), the order entered in this case must still be reversed as it was entered six and a half months after that proceeding. The sentence after revocation was imposed on September 28, 2021, after which a judgment of conviction was entered. (106). The separate order requiring payment of extradition costs was not entered until April 13, 2022. (128; App. 5).

In sum, the \$3,264.40 in costs imposed for fees incurred after sentencing, and which was imposed by a separate order entered after both the sentencing and sentencing after revocation hearings, was statutorily prohibited.

CONCLUSION

For the reasons stated above, Mr. Geiger respectfully requests that this court reverse the circuit court's order requiring the payment of extradition costs and remand the case with directions that the judgment of conviction be amended to remove that requirement.

Dated this 17th day of October, 2022.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 1,947 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief 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 17th day of October, 2022.

Signed:

Electronically signed by

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