

FILED
12-16-2022
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2022AP1270-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

JONATHON S. GEIGER,
Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN THE BARRON COUNTY CIRCUIT COURT,
THE HONORABLE MAUREEN D. BOYLE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

In 2014, Jonathon S. Geiger pled guilty to exposing his genitals. The circuit court placed him on probation. In 2017, the Department of Corrections revoked Geiger's probation. Geiger failed to show up for the sentencing after revocation hearing. He was not located until four years later in Arizona.

In 2021, Geiger was arrested in Arizona and extradited to Wisconsin. At the sentencing after revocation hearing, the State asked the court to impose the costs of the extradition upon Geiger. The court imposed \$3,264.40 in extradition costs.

Geiger appeals and argues that the costs of extradition cannot be imposed because his extradition occurred after his conviction. Geiger's reading of the statute is too narrow. Here, the circuit court had statutory authority to impose costs, and it properly exercised its discretion when it did so. This Court should affirm.

ISSUE PRESENTED

Did the circuit court have the authority to impose extradition costs as part of its sentencing discretion?

The circuit court answered yes.

This Court should affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication. This case may be resolved by applying well-established legal principles to the facts of this case.

STATEMENT OF THE CASE

On July 6, 2014, Geiger was on the Wild Rivers bike trail in Rice Lake when he stopped a mother and daughter

and asked them for help. (R. 1:2.) Both women could clearly see Geiger's genital area because Geiger had cut a hole in his shorts to expose his penis. (R. 1:2.)

The State charged Geiger with lewd and lascivious behavior and exposing genitals or pubic area. (R. 1:1.) Geiger agreed to plead guilty to the second count—exposing his genitals. (R. 28:3.) On September 17, 2015, the circuit court withheld sentence and placed Geiger on probation for three years. (R. 14:1.)

On May 3, 2016, Geiger was arrested for probation violations due to drinking beer. (R. 39.) On May 31, 2017, an administrative law judge revoked Geiger's probation. (R. 19.) On June 14, 2017, DOC allowed Geiger to be released from jail because the DOC-recommended sentence was shorter than the amount of sentence credit owed Geiger. (R. 92.) Before his release, Barron County Sheriff employee Autumn Hoff informed Geiger that he had to appear at the sentencing after revocation hearing on July 5, 2017, and she gave him a copy of the notice to appear. (R. 124:7.)

On July 5, 2017, Geiger did not appear. (R. 127:2.) The court issued a bench warrant for his arrest in Wisconsin or adjacent states. (R. 91.) On April 4, 2019, the court amended the arrest warrant to allow execution nationwide. (R. 93.)

In July 2021, Arizona officials arrested Geiger. (R. 148:9–10.) He made his initial appearance in Arizona on July 14, 2021, and waived extradition to Wisconsin. (R. 148:9–10.) He appeared in Wisconsin on August 6, 2021. (R. 148:9.)

On September 28, 2021, the court held the sentencing after revocation hearing. (R. 108:1.) The court sentenced Geiger to one year, six months of initial confinement and two years of extended supervision. (R. 108:34.)

At sentencing after revocation, the State sought costs of \$3,264.40 for the costs associated with transporting Geiger

from Arizona to Wisconsin. (R. 108:36.) The court deferred ruling on the costs and asked the State to provide legal authority for imposing extradition costs. (R. 108:37.) The State filed a motion to amend the judgment of conviction to include the costs. (R. 109.)

At a hearing on the motion to amend the judgment of conviction, Geiger argued that he should not pay the costs because his extradition happened postconviction. (R. 144:7.) He also asserted that the State needed to request extradition costs at the original sentencing rather than at the sentencing after revocation. (R. 144:8.)

The State argued that Geiger could be ordered to pay the costs of his arrest and transport under the plain language of Wis. Stat. § 973.06(1)(a). (R. 144:13.) It also argued that Geiger should be ordered to pay the costs because they were incurred because of his action—he had notice of the sentencing after revocation hearing and fled the state instead of appearing as required. (R. 144:13–14.)

At a continued hearing on the State's motion, the court concluded that Wis. Stat. § 973.06(1)(a) applied because Geiger was arrested on the circuit court's warrant. (R. 143:8.) It noted that the statute did not distinguish between an arrest warrant pre-conviction or postconviction. (R. 143:8.) The court rejected Geiger's argument that costs could only have been imposed at the first sentencing hearing. (R. 143:9.) It concluded that would be illogical because Geiger was the person responsible for his nonappearance at the sentencing after revocation hearing. (R. 143:9.) It found that Geiger had notice of the hearing and failed to attend. (R. 143:9.)

The court reprimanded DOC for releasing Geiger prior to the sentencing after revocation hearing but ultimately noted that Barron County incurred the costs of extradition, not DOC. (R. 143:11.) And the court concluded that even if DOC had incurred the costs, Geiger would be responsible

because they were incurred based on his own actions. (R. 143:12.)

The court ordered Geiger to pay the costs. (R. 143:13.) It noted that Geiger could have avoided the costs by appearing on his own at the sentencing after revocation hearing. (R. 143:13.) It amended the judgment of conviction to include the costs for extradition. (R. 143:14.)

Geiger appeals. (R. 150.)

ARGUMENT

The circuit court properly ordered Geiger to reimburse Barron County for costs incurred transporting Geiger to Wisconsin.

A. Standard of Review

This Court must interpret Wis. Stat. § 973.06(1)(a). Statutory interpretation and the application of a statute to specific facts are questions of law that this Court reviews independently but benefitting from the analysis of the circuit court. *State v. Matasek*, 2014 WI 27, ¶ 10, 353 Wis. 2d 601, 846 N.W.2d 811.

This Court must also determine whether the circuit court exercised its discretion when it imposed costs. A circuit court properly exercises its discretion if, by reference to the relevant facts and factors, it explains how the sentence's component parts promote the sentencing objectives. *State v. Gallion*, 2004 WI 42, ¶ 46, 270 Wis. 2d 535, 678 N.W.2d 197. There is a strong public policy against interference with the sentencing discretion of the circuit court, and sentences are afforded the presumption that the circuit court acted reasonably. *Id.* ¶ 18; *McCleary v. State*, 49 Wis. 2d 263, 281, 182 N.W.2d 512 (1971).

B. Legal Principles

The circuit court has statutory authority to impose the payment of “fees and disbursements of the agent appointed to return a defendant from another state or country” “in the discretion of the court.” Wis. Stat. § 973.06(1)(a).

The costs statute articulates the only costs, fees, and surcharges that can be charged against the defendant. Wis. Stat. § 973.06(1). The circuit court can in its discretion order a defendant to pay necessary disbursements and fees of officers “incurred in connection with the arrest” of the defendant. Wis. Stat. § 973.06(1)(a). It also explicitly allows for the imposition of costs incurred “to return a defendant from another state.” Wis. Stat. § 973.06(1)(a).

This Court “assume[s] that the legislature’s intent is expressed in the statutory language.” *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. This Court gives effect to each word in order to avoid surplusage. *Id.* ¶ 46. If this interpretation “yields a plain, clear statutory meaning, then there is no ambiguity.” *Id.* (citation omitted). This Court does not consult legislative history when the statutory language is unambiguous. *Id.*

If the circuit court orders costs, it must do so at the time of sentencing where the record does not indicate that the defendant’s sentencing was continued for any purpose. *State v. Perry*, 215 Wis. 2d 696, 712, 573 N.W.2d 876 (Ct. App. 1997).

C. The court properly exercised its discretion when it ordered Geiger to pay extradition costs.

Here, based on the plain reading of the statute, the circuit court had authority to impose the extradition costs associated with Geiger’s arrest in Arizona and transport to

Wisconsin. The imposition of costs was timely. And the court properly exercised its discretion when it imposed such costs, because the costs were only incurred because of Geiger's own actions. This Court should affirm.

First, the statute's plain reading authorized the circuit court to order Geiger to pay the costs associated with his arrest in Arizona and transport to Wisconsin. Dating back to 1949, sentencing courts have had authority to impose costs onto a defendant at sentencing. *See* 1949 Wis. Act 631 (creating statute Wis. Stat. § 353.25(2)(a) the precursor to today's Wis. Stat. § 973.06(1)(a)). The relevant section allows circuit courts to impose costs associated with the arrest of the defendant, including the costs associated with transporting the defendant to Wisconsin. Wis. Stat. § 973.06(1)(a). Based on the language in the statute, arrest does not refer to only the initial arrest, but any time a defendant is arrested either with or without a warrant.

The statute does not contain any language limiting the collection of costs to only the initial arrest of a defendant. The statute says that the court has authority to impose the payment of "fees and disbursements of the agent appointed to return a defendant from another state or country" if they are incurred in connection with the arrest of the defendant. Wis. Stat. § 973.06(1)(a).

This Court does not read words into the statute that the legislature did not include. *See Dawson v. Town of Jackson*, 2011 WI 77, ¶ 42, 336 Wis. 2d 318, 801 N.W.2d 316. An arrest is defined as any seizure of a person. *Payton v. New York*, 445 U.S. 573, 585 (1980). Therefore, to read Wis. Stat. § 973.06(1)(a) to apply only to initial arrests would run contrary to the principles of statutory interpretation.

If the legislature wanted to exclude costs associated for arrest and extraditing a defendant after conviction, then it could have drafted the law to articulate that exclusion. To do

so would have only required adding a limiting word before the word arrest in the statute. But the legislature did not draft the law that narrowly. Since the meaning of the statute is plain, this Court need not look further. *See Kalal*, 271 Wis. 2d 633, ¶ 45.

Geiger argues that Wis. Stat. § 973.06(1)(a) cannot be used to impose costs of extradition for a sentencing after revocation. (Geiger's Br. 9.) Geiger's argument is contrary to the plain language of the statute: "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 fees at issue were incurred in connection with Geiger's return from another state. The statute says nothing about pre- versus post-conviction arrests and nothing about initial sentencings versus sentencings after revocation. Geiger's narrow reading of the statute must be rejected.

Additionally, none of the case law supports Geiger's claim. In *Perry*, 215 Wis. 2d at 712, the problem with the imposition of extradition costs was not that they were incurred after the initial conviction, but that they were imposed outside of the sentencing hearing. It does not support Geiger's reading of Wis. Stat. § 973.06(1)(a). Likewise, *State v. Grant*, 168 Wis. 2d 682, 685, 484 N.W.2d 370 (Ct. App. 1992), involved the timing of the court order imposing the costs, not when the costs were incurred by the defendant's action. It offers no support for Geiger's interpretation.

Geiger also relies upon *State v. Ferguson*, 202 Wis. 2d 233, 549 N.W.2d 718 (1996), and *State v. Peterson*, 163 Wis. 2d 800, 472 N.W.2d 571 (Ct. App. 1991). (Geiger's Br. 9–10.) But neither provides support for his claims. In *Ferguson*, the

supreme court examined whether a defendant could be assessed lab expenses as costs and concluded that those costs could not be assessed. *Ferguson*, 202 Wis. 2d at 237–39. And in *Peterson*, the court examined whether a defendant could be assessed general and unspecified law enforcement costs and concluded that those costs could not be assessed. *Peterson*, 163 Wis. 2d at 805. Neither is on point because the costs in question were not enumerated in the statute. Here, costs associated with arrest and transport to Wisconsin are explicitly allowed by the plain language of Wis. Stat. § 973.06(1)(a).

Next, the circuit court's order requiring Geiger to pay costs was timely. If the circuit court orders costs, it must do so at the time of sentencing where the record does not indicate that the defendant's sentencing was continued for any purpose. *Perry*, 215 Wis. 2d at 712. Costs are part of the sentence. Wis. Stat. § 973.07.

Here, the circuit court imposed the costs at a hearing held after the sentencing hearing. At the sentencing after revocation, the court explicitly withheld ruling on imposing costs of extradition as part of its sentence. (R. 108:37.) The court then gathered information and held hearing on whether to impose costs. The court's imposition of costs at a hearing held after the sentencing hearing was proper because it held open the question at the sentencing hearing.

Finally, the circuit court imposed the costs after properly exercising its discretion. Geiger received notice of the sentencing after revocation hearing, and he failed to appear. Instead, he fled the state, was not located for four years, and was arrested in Arizona. Barron County officials had to arrange for and pay the costs of transporting Geiger from Arizona to Wisconsin. Now, as part of his sentencing after revocation, the circuit court exercised its discretion and ordered Geiger to pay the costs associated with the extradition. The court's exercise of discretion was proper.

Geiger repeatedly states that his release from jail pending his sentencing after revocation was erroneous. (Geiger's Br. 4, 5, 7.) But that distracts from the issue before this Court. The extradition costs were not a direct result of his release from jail. They would never have been incurred if he had been in court for his sentencing after revocation hearing. The costs are the direct result of Geiger intentionally fleeing justice rather than facing sentencing after revocation. Any attempt to distract from his responsibility should be ignored.

Next, Geiger asserts that the circuit court was required to impose the costs at the initial sentencing hearing. (Geiger's Br. 11.) It was not. The argument is illogical, because at the initial sentencing hearing, the county had not incurred any costs, because Geiger had not yet fled to Arizona. Additionally, at the initial sentencing, the court withheld sentence and placed Geiger on probation. (R. 14:1.) Probation is not a sentence, but an alternative to a sentence. *State v. Horn*, 226 Wis. 2d 637, 647, 594 N.W.2d 772 (1999). This Court generally considers a sentencing after revocation as a continuation of the first sentencing. *State v. Brown*, 2006 WI 131, ¶ 21, 298 Wis. 2d 37, 725 N.W.2d 262. As such, the court's imposition of costs at the sentencing after revocation was timely.

Finally, Geiger claims that the costs were imposed in violation of law because they were imposed after the sentencing after revocation hearing by amending the judgment of conviction. (Geiger's Br. 12.) Here, the circuit court left open the question of costs at sentencing after revocation. (R. 108:37.) Because it did so, the court did not violate the requirement that it must impose costs at sentencing. *See Perry*, 215 Wis. 2d at 712 (court can impose costs if the sentencing was continued for any purpose).

In sum, the plain statutory language allows for imposition of extradition costs associated with the arrest and transport of Geiger. The sentencing court held open its

sentencing decision regarding costs and therefore, its imposition after the initial hearing ended was timely. And the circuit court properly exercised its discretion in imposing costs associated with the extradition of Geiger from Arizona to Wisconsin. This Court should affirm.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 16th day of December 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,640 words.

Dated this 16th day of December 2022.

Electronically signed by:

Christine A. Remington

CHRISTINE A. REMINGTON

CERTIFICATE OF EFILE/SERVICE

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.

Dated this 16th day of December 2022.

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