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COURT OF APPEALS

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

Case No. 2022AP1734-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KIT R. STILWELL,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN
KENOSHA COUNTY CIRCUIT COURT, THE HONORABLE LEE S.
DREYFUS, JR., PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

Stilwell was charged with three counts of misdemeanor bail jumping resulting from an incident occurring at the Kenosha County Courthouse while Stilwell as on bond in three separate cases. Each of Stilwell's pending cases had a no contact provision with L.K.¹ Stilwell proceeded to take the case to trial before the Honorable Lee Dreyfus Jr., where he was found guilty of all three counts of bail jumping.

Stilwell appeals contends that the trial was unlawful as he was not given notice of the trial, and that Reserve Judge Dreyfus was improperly assigned. Additionally, Stilwell contends that his speedy trial rights were violated and that a no contact provision was unlawful.

This Court should affirm the judgment of conviction and find that none of the claims Stilwell makes in his brief are supported by the facts or law.

ISSUES PRESENTED

1. Was the trial held unlawful for lack of notice to Stilwell?

The trial court said no, and proceeded over Stilwell's objections and motions.

This Court should say no.

2. Was Judge Lee Dreyfus Jr. without lawful jurisdiction to hear this case?

The trial court said no, and proceeded to trial over Stilwell's objections and motions.

This court should say no.

3. Should this case be dismissed for violation of Stilwell's speedy trial rights?

The trial court said no.

¹ The State refers to the victim and subject of no contact orders by initials only.

This court should say no.

4. Should the no contact order with L.K. be determined to be unlawful, requiring reversal of Stilwell's conviction?

The trial court said no.

This court should say no.

STATEMENT ON ORAL AGUMENT AND PUBLICATION

Oral argument is unnecessary because the issues will be fully presented in the briefs. Publication is unwarranted because the issues can be resolved by applying well-established legal principles to this case.

STATEMENT OF THE CASE

Stilwell was on bond in three separate misdemeanor cases in Kenosha County on September 24, 2018. (R. 1:1-3). In one of the cases, Stilwell was charged with battery and disorderly conduct, while in the other cases he was charged with bail jumping. (R. 1:2). In each case, the defendant posted an amount of cash, in addition to signing his bond acknowledging the non-monetary conditions. (R. 1:2; 374:1; 375:1, 376:1). Each of these bonds required that Stilwell have no contact with L.K. (R. 1:2; 374:1; 375:1, 376:1). The bond in one case, file 2018CM000592, was signed by the defendant on May 9, 2018 prior to his release. (R. 1:2, 374:1). The remaining two bonds, in file 2018CM000214 and 2018CM000384 were signed on April 25, 2018. (R. 1:2; 375:1; 376:1).

On September 24, 2018, Stilwell was scheduled to appear in court before Judge Schroeder in the three above-mentioned files. (R. 1:2-3). Stilwell was observed alongside L.K. in the hallway outside of the courtroom. (R. 1:2-3). Surveillance video showed Stilwell had motioned toward L.K., and began speaking with her. (R. 1:3, 346). Subsequently, Stilwell was charged with three counts of bail jumping by complaint on March 5, 2019. (R. 1:1-3).

Stilwell appeared before the court commissioner in this case on March 11, 2019 (R. 381:2). Stilwell refused to sign the bond, but was erroneously released after cash was posted. (R. 381:1). The court issued a notice of hearing requiring Stilwell to appear in court on April 2, 2019

for the purposes of signing his bond, and Stilwell requested an adjournment of the hearing. (R. 24:1-5). The court denied the request for adjournment and left the hearing on for April 2, where Stilwell failed to appear. (R. 381:3-4). A bench warrant was issued on that day and the prior bond ordered forfeited. (R. 381:3-4). The original unsigned bond referenced a court date for May 15, 2019, and incorrectly stated the location was in the lower level of the courthouse. (R. 381:6; 23:1-2). This was in error as meeting with the district attorney occur only on Friday afternoons, and May 15, 2019 was a Wednesday, and the hearing was actually held before Judge Schroeder. (R: 381:6). In case there was any confusion regarding this date, Stilwell again failed to appear for the next scheduled date on June 3, 2019. (R. 381:6).

Although Stilwell did continue to file some motions and send letters to the court, the bench warrant remained active until Stilwell's arrest on November 30, 2020. (R. 381:3-8). On January 14, 2021, Stilwell appeared before the court, where a competency evaluation was ordered. (R. 381:8). On February 1, 2021, a hearing was set regarding competency and Stilwell, while incarcerated, refused to appear for court. (R. 381:9). Another hearing was held on February 23, 2021, where Stilwell had not yet received the recently completed competency report. (R. 381:9). A new hearing was scheduled on March 18, 2021, where Stilwell again refused to appear for court from the Kenosha County Detention Center. (R. 381:10). The court set Stilwell's matters for trial on April 26, 2021. (R. 381:10). On April 26, 2021, Stilwell's trial was rescheduled to June 7, 2021, due to Stilwell requesting to have outstanding motions heard. (R. 381:10). On June 7, 2021, the trial was removed from the calendar as Stilwell again refused to appear for court. (R. 381:11). Another hearing was set for June 15, 2021, where again Stilwell refused to appear for court. (R. 381:12). Stilwell appeared via video for a hearing on June 18, 2021, where a trial date was again set for August 9, 2021. (R: 381:12). On August 9, 2021, Stilwell again refused to leave his cell and another competency evaluation was ordered. (R: 381:12).

Attorney Philip Marry was appointed as advocate counsel on behalf of Stilwell and appeared before the court on August 25, 2021, when Stilwell again refused to appear in court. (R. 381:13). Another

hearing was set for September 7, 2021, where Attorney Marry appeared and moved to withdraw, as Stilwell did not wish to have Attorney Marry represent him. (R. 381:13). Stilwell again refused to appear for this hearing. (R. 381:13). The court ordered the competency evaluation be performed inpatient through the Department of Health. (R. 381:13).

A competency hearing was held on October 29, 2021, where Stilwell did attend and participate in the hearing, and Stilwell was found competent to proceed. (R. 381:14). A jury trial was scheduled for the week of January 4, 2022. (R. 381:14). Stilwell appeared in court on January 4, 2022, where he moved to dismiss the case and the motion was denied. (R. 381:14). Stilwell requested a new judge be assigned and that request was also denied. (R. 381:14; 261:17). Stilwell also requested the assistant district attorney on the case be held in contempt. (R. 381:14). Based on Stilwell's behavior, the court ordered another competency evaluation. (R. 381:14; 261:23).

The next scheduled court hearing occurred on February 14, 2022, where Stilwell again refused to appear for court either in person or via video. (R. 381:15). The next hearing occurred on March 25, 2022, where Stilwell did appear. (R. 381:16). At this hearing, Stilwell was held in contempt for making the comment "screw you" on the record to the assistant district attorney. (R. 381:16). A competency hearing was set for May 3, 2022. (R. 381:16).

A competency hearing was held on May 3, 2022, where a doctor appeared to testify. During this hearing, Stilwell made an obscene gesture toward the court and the matter was set over to May 27, 2022. (R. 381:17).

On May 27, 2022, Reserve Judge Lee Dreyfus Jr. presided over the court in place of Judge Schroeder, who was on an extended leave. (R. 381:17-18). Stilwell was found incompetent and sent for inpatient treatment. The next hearing occurred on July 21, 2022, where Stilwell was found competent to proceed before Judge Jason Rossell. (R. 381:19). A final plea offer was made to Stilwell and the offer was rejected. (R. 381:19). Stilwell was given notice on the record of jury selection and trial, which was scheduled for September 19, 2022. (R. 381:19)

On September 19, 2022, Stilwell appeared in court before Judge Dreyfus, who was again sitting in place of Judge Schroeder. (R. 381:19). The trial in case 2019CM000287 was selected to proceed that day and a jury was seated. (R. 381:19). Stilwell's various motions were also heard and denied. (R. 381:19). Trial commenced on September 20 and 21, 2022. (R. 381:20-21). Stilwell was convicted of three counts of bail jumping and sentenced to jail with credit for time served. (R. 381:21). No transcript of this trial is in the record for this appeal. Additionally, Stilwell's pro se brief does not cite to the record for any of his factual assertions, many of which are not based in fact and are argumentative.

ARGUMENT

I. The trial in this matter was lawfully set, and Stilwell was given ample notice to prepare for this trial.

Stilwell argues that the trial in this matter was not scheduled or ordered, and in violation of section 969.09, Wisconsin Statutes. Section 969.09 refers to conditions of release, and says that as a condition of bond, a defendant must appear in court. This statute is not applicable or relevant in this matter. Stilwell was given adequate notice of this trial date on July 21, 2022, where trial was set for nearly two months later on September 19, 2022. Stilwell was present in court on this particular day and was given notice. Stilwell cites no authority requiring the court give any further notice than this actual notice in open court. Nothing has been shown by Stilwell to support the claim that this trial was unlawfully set, or that he did not have adequate notice of the trial. There is nothing put forward by Stilwell in his brief, or in the record to show that he requested an adjournment of the trial for his lack of preparation. Stilwell has shown nothing to support the assertion that the trial in his matter was unlawfully set, or that he was inadequately prepared, as the trial was lawfully set.

II. Judge Dreyfus lawfully presided over the trial and other hearings in this matter.

Stilwell argues that Judge Dreyfus was not legally permitted to preside over the trial in this matter, and that a particular form was not

filed, so there was nothing to give Judge Dreyfus jurisdiction to preside over this matter. Stilwell cites to Supreme Court Rule 60.04, which references the Code of Judicial Conduct, which deals with a judge performing the duties of judicial office impartially and diligently. Stilwell's brief lacks any authority or references to the record to show that Judge Dreyfus did not hear this trial impartially or diligently. Stilwell also provides no authority to show that a particular court form must be filed to show that a judge may preside over a case. No authority has been provided as there is nothing to show that a particular form is required to be filed for a court to hear a case. Rather the circuit courts in Wisconsin possess general jurisdiction to hear all criminal actions. Wis. Stat. § 753.03.

There is also nothing to show that Judge Dreyfus, sitting a reserve judge, was there contrary to the law. Wisconsin Statutes section 753.075 permits reserve judges to serve either temporarily or for a longer term in the place of another circuit judge. Judge Dreyfus lawfully served as the judge in this matter, and there are no issues with his qualifications to hear matters in this case.

III. No violation of Stilwell's speedy trial rights occurred.

Stilwell claims that there was no jurisdiction to hear this case 60 days after his initial appearance. Stilwell appears to misinterpret the Wisconsin speedy trial statute, which does afford a defendant a speedy trial in a misdemeanor action within 60 days from the time of initial appearance. Wis. Stat. § 971.10(1). Stilwell, however, ignores remainder of the statute, which provide for circumstances where a trial may be continued and the speedy trial period may be extended. Wis. Stat. § 971.10(3). The remedy listed is that an individual in custody shall be discharged from custody, but the non-monetary conditions of bond or release will remain in effect unless those conditions are modified or removed. Wis. Stat. § 971.10(4).

Stilwell incorrectly believes that the remedy for a trial occurring outside of 60 days would be dismissal. This is clearly incorrect, as the remedy would be release from custody. In this matter, Stilwell's initial appearance occurred on March 11, 2019. Stilwell then failed to appear

for court on his subsequent court dates, and remained in active warrant status until he was returned on the warrant on November 30, 2020. Following that, a number of additional delays occurred due to competency evaluations based on Stilwell's decorum in court, as well as numerous occasions where Stilwell refused to leave his cell and appear for court, either in person or via video. These delays are all attributable to Stilwell, and there was no basis to release him from custody, and certainly no basis to discharge Stilwell from this matter.

Although Stilwell does not specifically set forth a violation of his constitutional right to speedy trial, he cites to *Hadley v. State*, 66 Wis. 2d 350, 225 N.W.2d 461 (1975). In this case, Hadley had requested a speedy trial on several occasions in the case, and objected when the case was adjourned, sometimes without a reason being noted in the record. *Id.* at 353-358. The court ultimately held that a delay of more than 18 months was unreasonable. *Id.* at 353. *Hadley* does not, however, state that an 18 month delay in a trial requires dismissal of a case, and later cases have further examined claimed constitutional speedy trial violations. *See Hipp v. State*, 75 Wis. 2d 621, 250 N.W.2d 299 (30 month delay in trial with 18 months being considered unreasonable or unnecessary does not warrant dismissal if defendant is not unduly prejudiced by the delay); *State v. Provost*, 2020 WI App 21, 392 Wis. 2d 262, 944 N.W.2d 23 (34 month delay is not reasonable when it is shown that delays were caused to accommodate defendant); *State v. Leighton*, 2000 WI App 156, 237 Wis. 2d 709, 616 N.W.2d 126 (a 26 month delay is not unreasonable, particularly in light of the fact that the defense had requested the majority of adjournments).

In the present case, Stilwell has not shown how he was prejudiced by any of the delays in this matter. Additionally, most, if not all of the delays are attributed to Stilwell. In the period of time from April 2019 until November 2020, Stilwell did not avail himself to the jurisdiction of the court, and had an outstanding bench warrant for his failure to appear. After November 2020, many court dates were delayed due to Stilwell's refusal to leave his cell to appear for court, and others were delayed for competency evaluations, primarily based upon Stilwell's decorum in court. There is nothing in the record, and certainly nothing

cited in Stilwell's brief to show that the delay in this case was unreasonable, nor that Stilwell suffered any prejudice by any delays in the matter.

IV. No citation was ever issued in this matter in lieu of a criminal complaint.

Stilwell claims that the assistant district attorney in this matter unlawfully "substitute [sic] a criminal complaint to a citation." Stilwell cites to Wisconsin Statutes section 968.081(1), which permits law enforcement to issue a citation from a criminal offense for an individual to return to court, but a criminal complaint still needs to be issued should this occur. In the present manner, a criminal complaint was issued with a warrant, and was never charged as a citation. It is believed that Stilwell is referencing a discussion of potential resolution of his matters where a plea to a county ordinance in lieu of the criminal charges was discussed, but ultimately declined by Stilwell. That discussion is irrelevant for the purposes of this appeal, as Stilwell is alleging that this case was improperly pled without a criminal complaint, which is false and clearly refuted by the record.

V. Stilwell was released from custody under reasonable conditions, and violated those conditions of release when this crime occurred.

Stilwell claims in his brief that he was not subject to non-monetary conditions of release when he posted cash for the release in the three cases that formed the basis for the three counts of bail jumping in this case. That is simply not true. In addition to monetary bail, additional conditions of release may be imposed as well. "If bail is imposed, it shall be only in the amount found necessary to assure the appearance of the defendant. Conditions of release, other than monetary conditions, may be imposed for the purpose of protecting members of the community from serious bodily harm or preventing intimidation of witnesses." Wis. Stat. § 969.01(4). In this case, in addition to a cash bail, additional non-monetary conditions may set as terms of a bond, and Stilwell's claims that non-monetary conditions cannot be set with a cash bail is incorrect. Stilwell's bonds contained a condition to have no contact with L.K. or her

residence, and the defendant was convicted by a jury of having contact with L.K. Stilwell has not made a claim that there was anything improper or unconstitutional in setting a no contact order with L.K., which is a permissible restriction on association during the period of release. Wis. Stat. § 969.02 (3)(b).

CONCLUSION

This Court should affirm the judgment of conviction.

Dated This 27th day of January, 2023.

Respectfully submitted,

MICHAEL D. GRAVELEY
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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 2,601 words.

Dated this 27th day of January, 2023.

Electronically signed by:

Zachary L. Brost

ZACHARY L. BROST

Assistant District Attorney

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, and by United States Mail to Appellant Kit Stilwell.

Dated this 27th day of January 2023.

Electronically signed by:

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