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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal Nos. 2023AP000302-CR; 2023AP000303-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

WILLIAM J BUFFO,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 12, THE HONORABLE JUDGE CHRIS TAYLOR, PRESIDING

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<i>Wiley v. M.M.N. Laufer Fam. Ltd. P'ship</i> , 2011....4 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236	
 <u>STATUTES CITED</u>	
Wis. Stat. § 808.075(4)(g)7	

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State does not believe that publication or oral argument would be necessary or appropriate in this case.

ARGUMENT

The Court should affirm the circuit court's February 8, 2023 order because (1) the defendant-appellant's brief develops zero arguments in support of a reversal of the trial court's order, and (2) the February 8, 2023 order accurately reflected the court's authority on limiting frivolous filings.

I. Facts relating to the present two appeals

a. Dane County Case 2020CM2222

On October 16, 2020, the defendant-appellant was charged with criminal damage to property and disorderly conduct with use of a dangerous weapon. 23AP302; Dkt 2. On August 27, 2021, he pled guilty to criminal damage to property and the count of disorderly conduct with use of a dangerous weapon was dismissed and read-in. Dkt 91. He was placed on probation. *Id.* On January 26, 2023 the defendant was revoked from probation and sentenced to 6 months jail. Dkt. 289.

b. Dane County Case 2020CF2667

On October 20, 2020, the defendant-appellant was charged with thirteen counts, all with a domestic abuse assessment attached, including stalking, knowingly violating a domestic abuse injunction order (5 separate counts), knowingly violating a domestic abuse temporary restraining order, bail

jumping (5 separate counts), and sending a computerized message threatening injury or harm. Dkt. 2. On August 27, 2021, the defendant pled to two domestic abuse injunction violations as well as the computerized message violation for probation. Dkt. 276. The remainder of the charged counts were dismissed and read-in. *Id.* On January 26, 2023, the defendant-appellant was revoked and sentenced to 6 months jail on the injunction counts each as well as 90 days on the computerized message count. Dkt. 294.

c. Postconviction Phase

Throughout the pendency of these cases, the defendant has filed a torrid avalanche of motions before the trial court and this Court. His submissions included dozens of motions, letters, requests, and random irrelevant filings with hundreds of pages of attachments. 23AP302 Dkt. 293; 23AP303 Dkt. 298. In response, after over a year of filings, including many after the case had been sent to the court of appeals, the trial court issued an order. *Id.* Citing the defendant's excessive and inappropriate filings, the Court ordered that:

"1. Pending the result of Mr. Buffo's appeals, he is barred from filing any further motions, letters or documents of any type in the above-captioned matters with this Court, except as provided in #3.

2. Pending the result of Mr. Buffo's appeals, this Court will no longer review or consider any further post-conviction filings in these cases, except as provided in #3.

3. The only exception to these prohibitions relate to a legally-valid post-conviction motion regarding Mr. Buffo's recent sentencing following his probation revocations. Before such a filing(s) is accepted from Mr. Buffo in these cases, a Dane County judge must determine as set forth in a written order, whether the filing is procedurally appropriate and with legal merit." *Id.* p. 3

Between his two criminal cases, he has filed six appeals since September 2022: 22AP1803, 22AP1804, 23AP302, 23AP303, 23AP1007, and 23AP1008. The State understands that 23AP302 and 23AP303 relate to the trial court's February 8, 2023 order, including by virtue of the Court's ruling in *State v. Buffo*, 2022AP1803/22AP1804, Decision July 13, 2023, fn. 3.

II. Pertaining to these present appeals, the defendant-appellant has developed zero factual or legal arguments

The defendant-appellant's appeal should be rejected because it does not attempt to make any arguments regarding the court order it attempts to appeal. The defendant-appellant's brief, seemingly identical to briefs he has filed in other appellate cases, makes zero references to the circuit court's February 8, 2023 order, instead referring to matters appealed or otherwise resolved in other trial court or

appellate cases. The defendant references these appeals (2023AP000302; 2023AP000303) in one brief reference on page 6 of his 48 page brief, where he notes: "[t]he SPD Appellate is handling the appeal of this 3rd denial motion as cases 23AP303 and 23AP302. Acting as if they are Turtles ..."

Appellate courts need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 *abrogated on other grounds by Wiley v. M.M.N. Laufer Fam. Ltd. P'ship*, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236; *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). "A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories." *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999).

The defendant's misunderstanding regarding the scope of these appeals would be empathetically more troublesome if in anywhere in his filings before this Court or the trial court had he ever raised issues with the trial court's February 8, 2023 filing. What is clear is that the defendant's conscious complaints that he has with the trial court throughout the

course of the past few years have nothing to do with the legal scope of these appeals.

In any case, regardless of whatever the defendant's understanding as to who is handling these appeals on his behalf and what he has appealed, because he has advanced no factual case or legal arguments that remotely coincide with the scope of these appeals, the Court should affirm the trial court's February 8, 2023 order.

III. The trial court's February 8, 2023 order was a valid exercise of the court's authority.

Ignoring the aforementioned defect in the defendant-appellant's brief, presuming this Court reviews the lawfulness of the trial court's February 8, 2023 order, it should find that the trial court did not abuse its authority.

[W]hile persons have a constitutional right to access to the courts, that right is neither absolute nor unconditional. *Village of Tigerton v. Minniecheske*, 211 Wis. 2d 777, 785, 565 N.W.2d 586 (Ct. App. 1997) (*citing in re Green*, 669 F.2d 779, 785 (D.C.Cir. 1981)). "Apart from the necessity of a case-by-case determination of poverty, frivolity or maliciousness, a court may impose conditions upon a litigant—even onerous conditions—so long as they assist the court in making such determinations, and so long as they are, taken together, not

so burdensome as to deny the litigant meaningful access to the courts." *Id.* "A court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's access to the court." *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991) (*quoting Lysiak v. Commissioner*, 816 F.2d 311, 313 (7th Cir. 1987)).

The circuit court here, to the extent that it should even be considered a limitation, limited the defendant-appellant to filing "legally-valid" postconviction motions. The defendant was not universally barred from filing nor was he barred pending payment of fees or other limitations. His only limitation appears to have been to follow the law. To the extent that such an order constitutes a restrictive order, the court was within its authority to do so. Additionally, the court's order was made in response to a clear record of continuous untimely, frivolous, and voluminous filings made by the defendant. Faced with those circumstances, the trial court rendered its order to preserve judicial economy and to assist all parties in delineating what was being appealed at what time.

Lastly, the court's February 8, 2023 order was made at a time when it already had statutorily-constricted discretion

to decide issues. A trial court is severely limited in its ability to decide issues pending a concurrent appeal. A criminal court generally may only decide issues regarding release, modification or revocation of bond, render a sentence after revocation, determine sentence credit, modify conditions of probation or extend probation, modify a sentence, or deal with commitment-related issues. Wis. Stat. § 808.075(4)(g). In many ways, the trial court's February 8, 2023 order was an attempt to help channel the defendant's grievances to the correct court and to avoid conflating issues while the case was on appeal.

CONCLUSION

For the aforementioned reasons, the State asks that this Court affirm the trial court's February 8, 2023 order.



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CERTIFICATION

I certify that this brief conforms to the rules contained
in s. 809.19(8)(b), (bm) and (c) for a brief:

Monospaced font: 10 characters
per inch; double spaced; 1.5 inch
margin on left side and 1 inch
margins on the other 3 sides.
The length of this brief is 13
pages.

Dated: July 20, 2023.

Signed,



Tracy L. McMiller
Attorney for Plaintiff-Respondent