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STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2025AP000090

In the interest of K.R.C., a person under the age of 18:
STATE OF WISCONSIN,

Petitioner-Respondent,

v.

K.R.C.,

Respondent-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

The State filed a juvenile delinquency petition against Kyle¹ 351 days after the 20-day statutory deadline for filing a petition had passed. *See* Wis. Stat. § 938.25(2)(a). The issue presented is:

Did the circuit court err by denying Kyle's motion to dismiss the delinquency petition with prejudice?

The circuit court denied the motion to dismiss.

The court of appeals affirmed and found that the State proved good cause to “extend” the time limit. *State v. K.R.C.*, No. 2025AP000090, unpublished slip op. (Wis. App. Dec. 9, 2025). (App.3-15).

This Court should grant review and reverse.

CRITERIA FOR REVIEW

The State exceeded the 20-day deadline for filing a juvenile delinquency petition against Kyle by 351 days. *See* Wis. Stat. § 938.25(2)(a). The court of appeals found that the State proved “good cause to extend” the filing deadline. COA op., ¶29. (App.15). The decision brings to light several points of law requiring clarification.

¹ A pseudonym is used to preserve confidentiality. *See* Wis. Stat. § 809.19(1)(g).

First, it is unclear whether a finding of “good cause” can be used to grant a retroactive extension where the court did not grant an extension prior to the deadline’s expiration. In *F.E.W. v. State*, 143 Wis. 2d 856, 422 N.W.2d 893 (Ct. App. 1988), the court of appeals used a good cause standard to excuse a time limit violation. However, *F.E.W.* addressed a statute that no longer exists.² That statute differs from section 938.25(2)(a) in several ways. For example, section 48.25(2)(a) (1987-1988) allowed the court to make a retroactive finding at the plea hearing that “good cause has been shown for failure to meet the time limitations.” See *F.E.W.*, 143 Wis. 2d at 859. This language does not exist in section 938.25(2)(a).

Second, the good cause standard set forth in *F.E.W.* requires clarification. *F.E.W.* defined good cause with a four-part test involving: “(1) the best interests of the child, (2) whether the party seeking an enlargement of time has acted in good faith, (3) whether the opposing party has been prejudiced, and (4) whether the dilatory party took prompt action to remedy the situation.” *F.E.W.*, 143 Wis. 2d at 861.

When discussing the “best interest of the child” factor, the *F.E.W.* court stated, “[t]he juvenile court properly noted that it was in both the best interests of the child and the public that F.E.W. be held

² *F.E.W.* considered Wis. Stat. § 48.25(2)(a) (1987-1988). In 1995 juvenile delinquency proceedings were removed from Chapter 48 and placed under a newly created Juvenile Justice Code. See *State v. Hezzie R.*, 219 Wis. 2d 848, 872, 580 N.W.2d 660 (1998).

responsible for the consequences of his acts and be provided with services in an attempt to prevent a recurrence.” *F.E.W.*, 143 Wis. 2d at 861. This statement has been interpreted in Kyle’s case, and in other cases, to mean that it is *always* in the best interest of a child to be “held responsible” in court. *See* COA op., ¶¶15-16. (App.8-10). *See also*, *Interest of Jason B.*, 176 Wis. 2d 400, 408, 500 N.W.2d 384 (Ct. App. 1993). However, whether prosecution is in the child’s best interest must be an individualized determination. *See* Wis. Stat. § 938.01(2)(c) (“provide an individualized assessment of each alleged and adjudicated delinquent juvenile”).

In addition, the court of appeals treated *F.E.W.*’s “good faith” factor as a factual finding that it would uphold unless “clearly erroneous.” COA op., ¶19. (App.10-11). However, the question of good faith is more appropriately viewed as a question of law, or a mixed question of fact and law. In *F.E.W.*, the court of appeals reviewed whether good cause existed to permit the late filing of the petition under a mixed standard. *See F.E.W.*, 143 Wis. 2d at 858.

For these reasons, review is warranted under Wis. Stat. § 809.62(1r)(c)3. because “a decision by the supreme court will help develop, clarify or harmonize the law,” and “[t]he question[s] presented [are] not factual in nature but rather [are] a question of law of the type [] likely to recur unless resolved by the supreme court.”

STATEMENT OF THE CASE AND FACTS

On June 30, 2022, the Pepin County District Attorney received a referral regarding an incident involving Kyle. (R.4:1). On July 5, 2023, the State filed a juvenile delinquency petition. (R.2). This was 351 days past the 20-day statutory deadline for filing a delinquency petition. *See Wis. Stat. § 938.25(2)(a)*.

The State filed an affidavit regarding the late filing of the petition and asked the court to find “good cause” for the delay. (R.4:1-2). In the affidavit, it explained that, on July 7, 2022, it asked the District Attorney (DA) in Wabasha County, Minnesota to handle the case because Kyle and the alleged victim lived in Minnesota, and the DA agreed. (R.4:1).³ On October 13, 2022, the Wabasha County DA filed a case against Kyle. (R.4:1). However, the case was later dismissed. (R.4:1).

The State explained that a new Wabasha DA took office and determined that Minnesota did not have jurisdiction. (R.12:1; App.31). On May 17, 2023, the State sent a letter to the Wabasha County DA trying to justify jurisdiction and saying that the “Wisconsin time frames for addressing this issue have long passed.” (R.12:9; App.39). However, on June 21, 2023, the State received a letter from the Wabasha County DA explaining that the case had been dismissed on May 15, 2023, because Minnesota lacked jurisdiction. (R.12:14-15; App.44-45). Fourteen days

³ On July 19, 2022, the deadline to file a case against Kyle expired. *See Wis. Stat. § 938.25(2)(a)*.

later, on July 5, 2023, the State filed a petition against Kyle. (R.2).

Kyle's attorney moved to dismiss the petition with prejudice as a remedy for the time limit violation. (R.9:1-3). Kyle's attorney argued that Wabasha County clearly did not have jurisdiction given that all of the acts took place in Pepin County, and that the State's "dilatory action" was "contrary to the best interests of the juvenile, undertaken without good faith as it was wholly without legal support and in fact contrary to well-established law, heavily prejudiced the juvenile, and was not promptly remedied by the State." (R.13:2). By the time petition was filed, Kyle was receiving inpatient treatment in a residential treatment facility and was under juvenile court supervision on another matter. (*See* R.48:2).

The circuit court denied Kyle's motion to dismiss. (R.15:1-15; App.16-29). The court found there was no unnecessary delay in the State's filing of the petition. (R.15:6; App.21). The court further found that: there was reason to believe it was appropriate for Wabasha County to accept the case, and it was not the State's fault that it was dismissed; the State had acted in good faith; there was no prejudice to Kyle; and the State acted promptly to remedy the situation. (15:7-9; App.22-23).

On June 18, 2024, Kyle was adjudicated delinquent and placed under a one-year dispositional order. (R.50). Kyle appealed.

The court of appeals affirmed. *K.R.C.*, No. 2025AP000090, unpublished slip op. (App.3-15).⁴ The court of appeals applied the four good cause factors from *F.E.W.*, 143 Wis. 2d 856 at 861. First, as to the best interest of the child, the court of appeals stated that it is in a child's best interest to be held responsible and be provided services. *Id.*, ¶16. (App.9-10). Second, the court of appeals used a dictionary definition to define "good faith" and held that the circuit court's "factual finding" that the State acted in good faith was not clearly erroneous. *Id.*, ¶¶17-19. (App.10-11). Third, the court of appeals accepted Kyle's argument that he was prejudiced and noted that the State did not meaningfully respond to his prejudice argument. *Id.*, ¶¶20-22. (App.11-12). Finally, the court of appeals found that the State took "prompt action to remedy the situation" because it filed the petition within 20 days of receiving written notice that Wabasha County had dismissed its case. *Id.*, ¶28. (App.14).

The court of appeals concluded that "in weighing these factors together, it is clear that there was good cause to extend the State's deadline to file the delinquency petition." *Id.*, ¶29. (App.15).⁵

⁴ As a one-judge opinion issued after 2009 it is citable for persuasive value. Wis. Stat. § 809.23(3)(b).

⁵ Although the State's position in the circuit court was that it had good cause for violating the time limit, it abandoned that argument on appeal and instead argued, for the first time, that it did not in fact violate the time limit because the time the case was pending in Minnesota should be excluded under section 938.315(1)(a)1. The court of appeals did not address Kyle's

ARGUMENT

Dismissal should be granted where the juvenile delinquency petition against Kyle was filed 351 days after the 20-day deadline for filing the petition had passed.

A. Statutory provisions and standard of review.

Juvenile cases are governed by strict statutory time limits to ensure expeditious proceedings. *See generally*, Chapter 938 subchapter V.

If a county intake worker refers a case to the District Attorney's Office, the State has 20 days within which to "file the petition, close the case, or refer the case back to intake or, with notice to intake, the law enforcement agency investigating the case" and "if the case is referred back to intake or to the law enforcement agency investigating the case for further investigation, the appropriate agency or person shall complete the investigation within 20 days after the date of the referral." Wis. Stat. § 938.25(2)(a).

The 20-day filing deadline is mandatory. *In Interest of C.A.K.*, 154 Wis. 2d 612, 453 N.W.2d 897 (1990).

argument that the State abandoned its good-cause claim and did not address the State's new argument.

Section 938.25(2)(a) states:

...

The time periods in this paragraph may only be extended by a court upon a showing of good cause under s. 938.315. If a petition is not filed within the time periods in this paragraph and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to a petition that is not filed within the applicable time period in this paragraph. Failure to object to the fact that a petition is not filed within the applicable time period in this paragraph waives any challenge to the court's competency to act on the petition.

Wis. Stat. § 938.25(2)(a).

As shown, the filing deadline may only be extended for good cause, and if the petition is not filed within the original or extended time period, the court “shall grant appropriate relief” under section 938.315(3).

Next, section 938.315(3) provides the following options for appropriate relief:

Failure by the court or a party to act within any time period specified in this chapter does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. Failure to object to a period of delay or a continuance waives any challenge to the court's competency to act during the period of delay or continuance. If the court or a party does

not act within a time period specified in this chapter, the court, while assuring the safety of the juvenile, may grant a continuance under sub. (2),⁶ dismiss the petition with or without prejudice, release the juvenile from secure or nonsecure custody or from the terms of a custody order, or grant any other relief that the court considers appropriate.

Wis. Stat. § 938.315(3).⁷

Statutory interpretation is a question of law, reviewed de novo. *Waukesha Cty. v. M.A.C.*, 2024 WI 30, ¶25, 412 Wis. 2d 462, 8 N.W.3d 365.

Whether a dilatory party has proven “good cause” is also a question of law, reviewed de novo. *F.E.W.*, 143 Wis. 2d at 860.

B. This Court should grant review to clarify whether a court can retroactively extend the filing deadline after the deadline has already passed.

There is reason to question whether *F.E.W.*'s holding is applicable to Kyle's case given that the extension granted by the circuit court was granted

⁶ Under section 938.315(2), a continuance may be granted “only upon a showing of good cause,” and “only for so long as is necessary, taking into account the request or consent of the representative of the public under s. 938.09 or the parties, the interests of the victims and the interest of the public in the prompt disposition of cases.”

⁷ This section applies broadly to time limits under chapter 938. See Wis. Stat. § 938.315(1).

after the deadline had already passed. In *F.E.W.*, the court of appeals applied a statute that no longer exists and contains different language than section 938.25(2)(a). Yet, *F.E.W.* has continued to be applied to review violations of the filing deadline. See e.g., *Interest of M.D.B.*, No. 2023AP620, unpublished slip op. ¶15 (Wis. App. Feb. 6, 2024). (App.46-49).

However, differences in the respective statutes provide reason to question *F.E.W.*'s continued applicability.⁸ In *F.E.W.*, the court of appeals held that the State's three-day violation of the filing deadline was justified by good cause. *F.E.W.*, 143 Wis. 2d at 858. The applicable statute provided:

The time limits in this subsection may only be extended by a judge upon a showing of good cause under s. 48.315. If a petition is not filed within the time limitations set forth in this subsection and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall dismiss with prejudice a petition which was not timely filed *unless the court finds at the plea hearing that good*

⁸ In the lower courts Kyle did not argue that an extension of time could not be granted after the expiration of the filing time limit. However, multiple unpublished but citable court of appeals cases have applied section 938.25(2)(a) to justify retroactive extensions. The existence of authority contrary to Kyle's position means that if the issue is decided, it should be decided by this Court. See *Cook v. Cook*, 208 Wis. 2d 166, 188, 560 N.W.2d 246 (1997) (whereas the court of appeals' primary function is error-correcting, the supreme court serves the primary function of law defining and law development).

cause has been shown for failure to meet the time limitations.

Wis. Stat. § 48.25(2)(a) (1987-1988) (emphasis added).

By contrast, section 938.25(2)(a), provides:

The time periods in this paragraph may only be extended by a court upon a showing of good cause under s. 938.315. If a petition is not filed within the time periods in this paragraph and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to a petition that is not filed within the applicable time period in this paragraph. Failure to object to the fact that a petition is not filed within the applicable time period in this paragraph waives any challenge to the court's competency to act on the petition.

Wis. Stat. § 938.25(2)(a).

As shown, under section 938.25(2)(a), “the court shall grant appropriate relief as provided in s. 938.315 (3) with respect to a petition that is not filed within the applicable time period in this paragraph.” Wis. Stat. § 938.25(2)(a). The statute does not contain the same as the prior statute: “unless the court finds at the plea hearing that good cause has been shown for failure to meet the time limitations.” *Compare* Wis. Stat. § 48.25(2)(a) (1987-1988).⁹

⁹ Another difference in the statutes is that section 48.25(2)(a) (1987-1988) required dismissal, whereas section 938.315(3) provides alternative remedies.

Therefore, the plain language¹⁰ of 938.25(2)(a) indicates that the court may grant an extension prior to the time limit expiring for good cause, but if there has not been an extension granted prior to the expiration of the time limit, the juvenile is entitled to relief under section 938.315(3). Appropriate relief includes granting a continuance,¹¹ dismissing the petition with or without prejudice, releasing the juvenile from custody or a custody order, or any other relief that the court considers appropriate. Wis. Stat. § 938.315(3). This does not mean that whether the State had good cause for violating the time limit is not relevant. The court may consider good cause when deciding what specific relief is appropriate.

This Court should grant review to consider whether and under what circumstances the court may retroactively extend the time for filing a delinquency petition after the time limit has already passed.¹²

¹⁰ “[S]tatutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.’” *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted).

¹¹ For example, the court could grant a continuance of the fact-finding hearing.

¹² In *In re Moriah K.*, 2005 WI 152, ¶35 n29, 289 Wis. 2d 143, 706 N.W.2d 257, this Court referenced *F.E.W.*’s good cause factors. However, in *Moriah K.*, the extension was granted prior to the expiration of the time limit. *Id.*, ¶32.

C. The Court should grant review to clarify that there is no presumption that prosecution is in the juvenile's best interest.

In addition, *F.E.W.*'s holding and four-part good cause test requires clarification. First, the Court should clarify that there is no presumption that prosecution is in a child's best interest. When discussing the "best interest of the child" factor in Kyle's case, the court of appeals suggested that it is always in the child's best interest to be prosecuted.

The court of appeals stated:

This court has previously stated that it is in "the best interests of the child and the public that [the child] be held responsible for the consequences of his [or her] acts and be provided with services in an attempt to prevent a recurrence." *F.E.W.*, 143 Wis. 2d at 861. Indeed, this conclusion is consistent with the legislature's decision to allow the time periods set forth in WIS. STAT. § 938.25(2) to be extended for good cause, as well as the additional legislative purposes of WIS. STAT. ch. 938. *See* § 938.01(2)(a), (b), (g) (declaring the legislature's intent to "protect citizens from juvenile crime," "hold each juvenile offender directly accountable for his or her acts," and "ensure that victims ... of acts committed by juveniles that result in proceedings under this chapter are, consistent with this chapter and the Wisconsin constitution, afforded the same rights as victims ... of crimes committed by adults," respectively). Accordingly, the best interest factor

weighs in favor of concluding that the State had good cause for its delay in filing the petition.

COA op., ¶16. (App.9-10).¹³

The court of appeals relied on the statement from *F.E.W.* that “[t]he juvenile court properly noted that it was in both the best interests of the child and the public that F.E.W. be held responsible for the consequences of his acts and be provided with services in an attempt to prevent a recurrence.” *F.E.W.*, 143 Wis. 2d at 861. Yet, *F.E.W.* did not say it is *always* in the child’s best interest to hold them “responsible” in court; it found that it was in the child’s best interest in that particular case. *See id.*

Contrary to the court of appeals’ suggestion, prosecution is not always in the best interest of the child. The court of appeals selectively quoted the legislative “intent and purposes” section. COA op., ¶16. (App.9-10) (citing 938.01(2)(a), (b), (g)). However, the Legislature codified seven purposes and they are “equally important.” The legislative purposes are:

(2) Legislative intent. It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the legislature declares

¹³ The circuit court did not make a finding whether allowing the petition to continue would be in Kyle’s best interest.

the following to be equally important purposes of this chapter:

- (a) To protect citizens from juvenile crime.
- (b) To hold each juvenile offender directly accountable for his or her acts.
- (c) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to prevent further delinquent behavior through the development of competency in the juvenile offender, so that he or she is more capable of living productively and responsibly in the community.
- (d) To provide due process through which each juvenile offender and all other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced.
- (e) To divert juveniles from the juvenile justice system through early intervention as warranted, when consistent with the protection of the public.
- (f) To respond to a juvenile offender's needs for care and treatment, consistent with the prevention of delinquency, each juvenile's best interest and protection of the public, by allowing the court to utilize the most effective dispositional option.
- (g) To ensure that victims and witnesses of acts committed by juveniles that result in proceedings under this chapter are, consistent with this chapter and the Wisconsin constitution, afforded the same rights as victims and witnesses of crimes

committed by adults, and are treated with dignity, respect, courtesy, and sensitivity throughout those proceedings.

Wis. Stat. § 938.01(2) (emphasis added).

As shown, one of the legislative purposes—that was not mentioned by the court of appeals—is to “divert juveniles from the juvenile justice system through early intervention as warranted, when consistent with the protection of the public.” Wis. Stat. § 938.01(2)(e). Another purpose is to ensure “due process” and “fair hearings” for the juvenile. Wis. Stat. § 938.01(2)(d). In addition, the Legislature specifically stated that there must be “individualized assessment of each alleged and adjudicated delinquent,” which is incompatible with the court of appeals’ conclusion that it is always in the best interest of the juvenile to prosecute them. *See* Wis. Stat. § 938.01(2)(c).

The term “best interest” is used under section 938.01(2)(f), which states an intent “[t]o respond to a juvenile offender’s needs for care and treatment, consistent with the prevention of delinquency, each juvenile’s best interest and protection of the public, by allowing the court to utilize the most effective dispositional option.” Wis. Stat. § 938.01(2)(f). In other words, the Legislature decided that giving courts options is in the juvenile’s best interest.

This Court should grant review to clarify that the best interest of the child is an individualized inquiry. Sometimes, dismissing a petition with prejudice is in the child’s best interest.

D. This Court should grant review to clarify the standard of review applicable to the good faith factor.

Guidance is also needed on *F.E.W.*'s "good faith" factor. *See F.E.W.*, 143 Wis. 2d at 861. *F.E.W.* did not define "good faith." In Kyle's case, the court of appeals consulted a dictionary and defined good faith as: "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." COA op., ¶17. (App.10). The court of appeals relied on Black's Law Dictionary for this definition. *Id.* (citing Good faith, BLACK'S LAW DICTIONARY (12th ed. 2024)). It contrasted "good faith" with "bad faith," which is defined as "[d]ishonesty of belief, purpose, or motive." *Id.*¹⁴

The court of appeals then determined that the circuit court's finding that the State acted in good faith was a factual finding and that Kyle did not argue that the court's findings were clearly erroneous. COA op., ¶¶18-19. (App.10-11).

However, the question of good faith is more appropriately viewed as a question of law or a mixed

¹⁴ The court of appeals indicated it would consult the dictionary because "'Good faith' is not defined in WIS. STAT. ch. 938. *See* WIS. STAT. § 938.02." COA op., ¶17 (citing *Kalal.*, 271 Wis. 2d 633, ¶45. (App. 10). The reason why good faith is not defined in the statute is because it does not exist in the statute.

question of fact and law. In *F.E.W.*, the court of appeals independently reviewed whether good cause existed to permit the late filing of the petition. *F.E.W.*, 143 Wis. 2d at 858 (“[t]he historical facts surrounding this question in this case are undisputed. The application of the rules of law to such facts presents a question of law”). Under a mixed standard, “[t]he first question is what, in fact, actually happened; the second question is whether those facts, as a matter of law, have meaning as a particular legal concept.” *Wisconsin Dept. of Revenue v. Exxon Corp.*, 90 Wis. 2d 700, 281 N.W.2d 94 (1979).¹⁵

This Court should grant review to determine the proper standard of review of a good faith finding.

E. In Kyle’s case, the appropriate relief is dismissal of the petition with prejudice.

The State did not obtain an extension of time prior to the expiration of the 20-day filing deadline. As explained above, *supra* Argument I.B., this Court may determine that a good-cause finding cannot be used to retroactively extend the time limit after it has already passed. If so, the court was required to grant Kyle relief under section 938.315(3). Kyle argues below that the only appropriate relief in his case is dismissal with prejudice.

¹⁵ In other contexts, good faith is reviewed de novo as a question of law. *E.g. State v. Scull*, 352 Wis. 2d 733, ¶13 (good faith exception to the exclusionary rule).

However, even if the Court applies *F.E.W.* to determine whether a retroactive extension of the time limit can be granted, it should find that there is no good cause to do so in Kyle's case. The first factor is the best interest of the child. *F.E.W.*, 143 Wis. 2d at 861. It was in Kyle's best interest to dismiss the petition with prejudice. Kyle acknowledges that juveniles may benefit from being held accountable and receiving services that prevent reoffending and help support a juvenile's success in the community. Here, however, Kyle was already receiving inpatient treatment in a residential treatment facility. (*See* R.48:2). He was under Minnesota juvenile supervision and receiving services there. (*See* R.50:1). In addition, he had already experienced consequences for the incident in this case by being subject to prosecution for seven months in Minnesota.

The second factor is whether the party seeking the extension has acted in good faith. *F.E.W.*, 143 Wis. 2d at 861. The State allowed the deadline to lapse because it asked the Wabasha County DA to file a petition and that DA agreed. However, the State had a duty to investigate whether Minnesota could in fact prosecute the case. With reasonable diligence the State would have realized Minnesota did not have jurisdiction. No part of the alleged offense in this case took place in Minnesota. (*See* R.1). Therefore, Minnesota lacked territorial jurisdiction. "It is elementary that a court may act only upon crimes committed within the territorial jurisdiction of the

sovereignty seeking to try the offense.” *Hotzel v. Simmons*, 258 Wis. 234, 240, 45 N.W.2d 683 (1951).¹⁶

The court of appeals did not find “any evidence to suggest that the State acted without honesty in belief or that it acted with intent to defraud or to seek an unconscionable advantage.” *Id.*, ¶19. (App.10-11). However, as the court of appeals acknowledged, good faith also means “faithfulness to one’s duty or obligation.” COA op., ¶17. (App.10).

Here, Kyle did not argue the State was dishonest or trying to gain an unfair advantage over Kyle. He argued that the State failed to satisfy its duty to research the law. *See* ABA standard 3-4.1, Investigative Function of the Prosecutor (4th ed. 2017) (“[p]rosecutors should research and know the law in this regard before acting”). Failure to exercise due diligence, although not evidence of dishonesty, may amount to a lack of good faith. *See Foseid v. State Bank of Cross Plains*, 197 Wis. 2d 772, 797, 541 N.W.2d 203,

¹⁶ When asking the new Wabasha County DA not to dismiss the case, the State cited Minn. Stat. § 260B.007(6), which provides that a child can be found delinquent for a violation of federal law or a law of another state. (R.12:9; App.39). However, this statute only allows disposition of an offense that occurred in Minnesota, if the offense would violate another jurisdiction’s law. It does not allow Minnesota to prosecute crimes that occurred in another jurisdiction. (*See* R.12:14; App.44). Moreover, it is not clear if the State was relying on that statute at the time of its decision to pass off the case, given that its initial correspondences cited no law and simply asked for a “favor.” (*See* R.12:4-8; App.34-38).

213 (Ct. App. 1995) (noting bad faith in contract law to include “lack of diligence”).

The third factor is whether “the opposing party has not been prejudiced.” *F.E.W.*, 143 Wis. 2d at 861. Here, the court of appeals found that the State conceded that Kyle was prejudiced. COA op., ¶¶20-22. (App.11-12). Kyle was prosecuted twice for the same incident. In total, Kyle was subject to investigation and prosecution for nearly two years. The prolonged prosecution disrupted Kyle’s life, caused him stress, and damaged his reputation in the small county in which he lived. By the time Pepin County filed its petition, Kyle was residing in a residential treatment facility. (R.48:2). His treatment was interrupted by multiple court dates and competency proceedings in this case. (*E.g.* R.68:30).

The final factor is whether the dilatory party took prompt action to remedy the situation. *F.E.W.*, 143 Wis. 2d at 861. First, the State should have ensured that the Wabasha County case proceeded in a timely manner. The petition there was not filed until October 13, 2022. (R.12:1; App.31). Yet, the case was referred to the Pepin County DA on June 30, 2022. (R.12:1; App.31). Therefore, the filing exceeded Wisconsin’s 20-day filing deadline by 85 days. Due diligence required that the State at least ensure the timely filing of the Wabasha County petition.

The State also did not act promptly once it received notice of Wabasha County’s dismissal. The State knew by May 17, 2023, that the

Wabasha County DA doubted Minnesota's jurisdiction. (R.12:9; App.39). Then, the State received written notice on June 21, 2023, that the case had been dismissed on May 15, 2023. (R.12:13-15; App.43-45). Yet, the State did not file a petition until July 5, 2023. (R.2). The court of appeals found that the State acted diligently because it filed the petition within 20 days of receiving written notice of the dismissal. COA op. ¶28. (App.14). However, there is no reason to allow the State a full re-set of the deadline. The State did not explain why the petition could not be filed within a matter of hours or days of receiving written notice that the Wabasha County case had been dismissed, particularly where the writing was on the wall by May 17, 2023. Under section 938.315(2), any continuance granted shall be "only for so long as is necessary..."

Dismissal with prejudice is the only appropriate relief for the violation of section 938.25(2)(a) in Kyle's case. If the State violates the time limit for filing a petition, the court "shall" grant appropriate relief, which may include dismissal with or without prejudice, granting a continuance, releasing the child from secure or nonsecure custody, or any other relief the court deems appropriate. Wis. Stat. § 938.315(3). Here, the circuit court granted a continuance of the fact-finding hearing for good cause, but not as a remedy for the time limit violation. (R.15:9-10; App.24-25). Given that the court would have continued the hearing anyway, this remedy is insufficient because it

does not cause detriment to the State.¹⁷ Next, Kyle was not in custody, and therefore release was not an available remedy. And dismissal without prejudice was an insufficient remedy because the State failed to show good cause. *See e.g., Davis*, 248 Wis. 2d 986, ¶17 (under the prompt disposition statute, dismissal without prejudice should be granted when good cause is shown and dismissal without prejudice should be granted when no good cause is shown).

The 351-day delay in this case was egregious. In *F.E.W.*, the court of appeals considered a 3-day violation that was caused by misplaced paperwork. *F.E.W.*, 143 Wis. 2d at 858. Once the mistake was noticed, the re-referral was made one day later, and the petition was filed a day later. *Id.* The court of appeals found good cause based on an inadvertent mistake, the fact that no prejudice was alleged, and the State's prompt action to remedy the error. *Id.* at 862. Here, the violation was 351 days, not 3 days, the State's delay was intentional not inadvertent, prejudice was shown, and the State failed to promptly remedy the error.

The appropriate relief for the State's violation of section 938.25(2)(a) was dismissal with prejudice.

¹⁷ *See e.g., State v. Davis*, 2001 WI 136, ¶17, 248 Wis. 2d 986, 637 N.W.2d 62 (an appropriate remedy should serve a "detriment/benefit objective").

CONCLUSION

For the reasons stated above, Kyle respectfully asks the Court to grant this petition for review.

Dated this 8th day of January, 2026.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 5,514 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition 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 8th day of January, 2026.

Signed:

Electronically signed by

Colleen Marion

COLLEEN MARION

Assistant State Public Defender