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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT ONE

State of Wisconsin,

Plaintiff – Respondent,

vs.

APPEAL # 22 AP 1202 – CR

22 AP 1203 – CR

Aman Deep Singh,

22 AP 1204 – CR

Defendant – Appellant.

On Appeal From Orders Entered in the Circuit Court of
Milwaukee County, Judge Jack Davila, Presiding, Denying
Various Post-Dismissal Motions.

(L.C. #17CT341, 17CM3327, 18CM3479)

APPELLANT REPLY BRIEF

Aman Deep Singh

Defendant - Appellant

ARGUMENT

I. THE STATE CONCEDES THAT THE JUDGMENT FOR COURT APPOINTED ATTORNEY FEES SHOULD BE VACATED.

The State concedes that attorney fees were improperly taxed against Singh. Based on the State's concession, the court should summarily reverse that portion of the trial court order under review.

II. DISMISSALS FOR VIOLATION OF A STATUTE OF LIMITATIONS MUST NECESSARILY BE WITH PREJUDICE.

The State, relying on *State v. Braunsdorf*, 98 Wis. 2d 569, 572, 297 N.W.2d 808 (1980), argues that the only circumstances under which a criminal case may be dismissed with prejudice prior to the attachment of jeopardy are for violations of Wis. Stat. 976.05 or the right to a speedy trial. It is true that there is language in *Braunsdorf* that suggests this position. However, the Wisconsin Supreme Court subsequently modified this apparent bright line rule in *State v. Davis*, 2001 WI 136, 248 Wis.2d 986, 637 N.W.2d 62. "Because *Braunsdorf* addressed only a circuit court's inherent power to dismiss criminal cases, we conclude that it cannot be interpreted, as the State urges, to mean that a circuit court's authority to dismiss a criminal case is limited to a dismissal of the case without prejudice unless a statute explicitly authorizes a dismissal with prejudice." *Id* at ¶ 22. Singh brought up *Davis* and raised this point in his brief in chief. The State completely ignores it.

A statute of limitations requires dismissal with prejudice. Time does not move backwards. Once a statute of limitations has expired, it is impossible to "unexpire". In *State v. Kollross*, 2019 WI App 30, 388 Wis. 2d 135, 931 N.W.2d 263, for example, this court ordered a prosecution dismissed with prejudice prior to the attachment of jeopardy because of a statute of limitations violation.

III. THE RECORD CONCLUSIVELY DEMONSTRATES THAT THE OWI CHARGES WERE DISMISSED FOR A VIOLATION OF THE STATUTE OF LIMITATIONS.

Singh's appellant brief quotes extensively from the Motion to Dismiss, the State's response brief, and the transcripts of the motion hearing to demonstrate that the OWI charges were dismissed for a violation of the statute of limitations. It is right there in the prosecutor's own words. "I do agree with Counsel there in terms of we cannot count that implied consent conviction." (pg 7, ln 22-24) "I agree with Counsel that there is a two-year statute of limitations to file civil forfeiture matters." (pg 8, ln 22-24) "I think the main disagreement is whether or not the statute of limitations was violated." (pg 19-20, ln 24-1) [R78]

It is difficult to discern whether the State is contesting this interpretation. If the cases were not dismissed on statute of limitations grounds, then why were the cases dismissed? The closest Singh comes to finding a counter argument in the State's brief is a single conclusory sentence with no citation to statutes, case law or the record. "This Court's decision in *Forrett* required Singh's criminal cases be dismissed and referred back to the municipal court since the State lacked the requisite prior convictions to make Singh's charges misdemeanors." [Respondent Brief page 11]

There is much wrong with this statement. This argument was never made in the circuit court. Singh's motion only argued that *Forrett* required amending the charge to a first offense (but that the statute of limitations did not permit the amendment). [R49] Nor did the State ever argue that *Forrett* required dismissal. "While the State agrees that the 2001 implied consent conviction cannot be counted, the State does not agree that it should result in the defendant's four open OWIs being dismissed." [R61 in 22AP1204] The sole issue in dispute was whether the statute of limitations permitted amending the charges to first offense OWI. Again, it is there in the prosecutor's own words. "I think the main disagreement is whether or not the statute of limitations was violated." (pg 19-20, ln 24-1) [R78]

When a criminal OWI charge is determined to be only a first offense, there is no statute or case law that requires the case be transferred to a municipal court. The State certainly does not cite any authority for this proposition. Circuit courts preside over first offense OWI all the time. There is also no statute or case law that requires the first offense charge to be reissued in the name of the municipality. The State certainly does not cite any authority for this proposition either. Were it not for the statute of limitations, the case could still have continued as a first offense prosecution in the name of the State of Wisconsin. The prosecutor vigorously argued for that outcome.

Because these cases were dismissed due to the statute of limitations, the dismissals should have been with prejudice.

IV. THE CRIMINAL STATUTE OF LIMITATIONS IS NOW EXPIRED AS WELL.

Singh made an additional argument in his trial court filings, which was not addressed by the circuit court, that the criminal statute of limitations is now expired as well. The State's response is "Wis. Stat. § 939.74 tolls the time limits for the criminal prosecution from the time the criminal complaint is filed. See Wis. Stat. § 939.74(3). In addition, the trial court found probable cause for each of Singh's OWI offenses." [Respondent Brief, page 11]

OWI may be civil or criminal. So while the criminal complaints may have contained probable cause for OWI, they did not state probable cause for criminal OWI. Probable cause for criminal OWI requires the State to allege sufficient countable prior offenses in the criminal complaint. The State failed to do that because it is unconstitutional to count the prior refusal that the state tried to count.

The State can only benefit from the tolling provision in Wis. Stat. 939.74 if it properly commences a criminal prosecution. If the State's charging document is defective because it does not contain probable cause for a crime, then the tolling

provision cannot apply. That is the circumstance here. The trial court never properly acquired jurisdiction over a criminal offense.

The State did not respond to the second part of Singh's argument. That even if the tolling provision applies, it only applies to the "same act". The "same act" here must include the same prior offenses that were alleged the first time. This prosecution would not toll for a new criminal OWI from the same incident that alleged different prior offenses. Where different facts need to be proved for criminal liability, it is no longer the "same act". But, *Forrett* permanently precludes recharging the same prior offenses.

V. REMEDIAL SANCTIONS ARE APPROPRIATE WHERE INDIVIDUALS SEEK RELITIGATION OF AN ISSUE ALREADY DECIDED AND WHERE THEY HAVE NO NON-FRIVOLOUS ARGUMENT FOR WHY ISSUE PRECLUSION SHOULD NOT APPLY.

Singh argues that the issue of the first offense OWI statute of limitations with regard to these incidents was decided, and the alleged contemnors have no non-frivolous argument for why they have commenced new prosecutions seeking a different outcome. The first part is discussed above. The State does not contest the second clause. The State's primary argument appears to be that this is just not a scenario in which remedial sanctions may be applied.


Singh can and has raised issue preclusion in the municipal prosecutions. But is that Singh's exclusive remedy? The appeal concerns what appears to be a novel question ... does Singh have an additional remedy as well by means of seeking remedial sanctions in the first court?

Singh believes this scenario falls under Wis. Stat. 785.01(1)(b). ["Disobedience, resistance or obstruction of the authority, process or order of a court."] The alleged contemnors have chosen to behave as though the trial court's statute of limitations based dismissal order never existed.

VI. CONCLUSION

Singh requests the court reverse the trial court orders denying the various post-dismissal motions that are the subject of this appeal.

Dated this 26th day of January, 2023,



Aman Deep Singh

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