

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

CASE NO. 2017 AP 931

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CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN,
Plaintiff - Respondent,

v.

(L.C. # 2003-GT-61)
Hon. STEVEN R. CRAY, Chippewa County

ERIC W. POIRIER,

Defendant - Appellant,

ON APPEAL FROM ORDER DENYING
INCOME ASSIGNMENT WRITTEN OBJECTION
HARM CAUSED, ENTERED IN CHIPPEWA COUNTY
HONORABLE STEVEN R. CRAY, PRESIDING

APPELLANT'S BRIEF

PROSE ERIC W. POIRIER #84057

Waupun Correction Institute

P.O. Box 351

Waupun, WI. 53963

QUESTION PRESENTED

1. WHETHER IT WAS ILLEGAL FOR THE STATE OF WISCONSIN TO IMPOSE A FINE OF \$ 1,189.⁰⁰ TO A SENTENCE ALREADY SERVED, AND TO ANOTHER CRIMINAL CASE BY ANOTHER JUDGE ABOUT 13 YEARS LATER TO ENHANCE PRESENT SENTANCE ?

"APPELLANT - POIRIER CLAIMS YES."

STATEMENT ON PUBLICATION AND PUBLICATION

PUBLICATION AND ORAL ARGUMENT IS NECESSARY TO CLARIFY THE LAW. THIS IS A NOVEL QUESTION AND WILL HAVE A GREAT IMPACT ON WISCONSIN. POIRIER SHOWS "GOOD CAUSE."

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Now Comes, Prose - Eric W. Poirier - Appellant, hereinafter Poirier with "GOOD CAUSE" in § 809.30 Rule aggrieved by the decisions rendered by the Honorable Steven R. Cray on April 03 and May 10, 2017. Poirier Presents the following:

STATEMENT OF FACTS

Poirier filed in the Circuit Court his Notice of appeal on May 13, 2017, because he was subjected to a sentence increase of a fine of \$ 1,189 in Case No. 2003-CT-61 by a different Judge, Steven R. Cray on April 03, 2017. This occurred out of the blue almost 13 years after that sentence was already satisfied. See (App., P. 1-2-3).

Poirier was sentenced by Hon. Roderick A. Cameron, on October 28, 2004 on Case No. 04-CF-19 to a term of 60 years. Poirier was locked up in the Chippewa County jail on January 22, 2004, and was sent to prison on December 03, 2004. Poirier was ordered to pay 25% of Court Costs and Fine as a Condition of Extended Supervision. See (App., P. 4-7). That was Poirier's expectation of his sentence. But the Department of Corrections kept taking monies out of Inmate Trust account until the \$350. was paid. See (App., P. 8-9). This has made his sentence more harsh.

Prior Claims, the Circuit Court's ruling on Motion To Sever Cases 2003-CT-61 AND 2004-CF-19 WAS GRANTED on March 18, 2004. Id. at (T: T: P: 11 line 22-25; P: 12 line 1-25), "The Court: There's a motion to sever some charges, right?"

Defense Counsel (Ms Meade): Correct.

The Court: I'm not sure I understand this severance argument. You want to have Counts 3 and 4 --

Ms Meade: Your Honor, the basic argument -- I think there are two prongs to the argument.

The Court: Wait. Wait. Let's get your motion straight first. What Counts do you want severed?

Ms. Meade: I think I asked for 3 and 4.

The Court: You also say Count 1.

Ms. Meade: Yeah, I might have had -- I just have Counts 3 and 4 on what I filed. I might have filed a different one.

The Court: Well, here's the motion that I have in front of me. It says, "moves the Court to sever Counts 3 and 4 and Count 1 in the other case" --

Ms Meade: Yeah. I'm sorry.

The Court: -- "and for separate trials."

Ms Meade: The other case is failure to report to jail and I put that there because I wasn't sure we were going to have that case tried at the same time or not.

The Court: I don't think we are going to be trying both cases at the same time. So that's not an issue."

Poirier on April 07, 2017 filed by first class mail postage prepaid an Income Assignment Order Written objection Irreparable Harm Caused Motion See (R:36:15).

Poirier cited the Hon. Roderick A. Cameron said at Sentencing H. (Oct. 28, 2004, Case No. 04-CF-19, Ti. M. P. 41 line 10-20), "The Defendant: Okay. Your Honor, One other issue. The Case No. 04-CF-25 I believe it was Your Honor, failure to report to jail for 30 days, I would ask that be dismissed because I have served 9-months in the County jail."

The Court: I'll find you have already satisfied that sentence.

The Defendant: Pardon?

The Court: I'll rule that you have already satisfied that sentence, so the sentence is concluded and the case is over."

Poirier had the wrong Case Number, and Corrected that to 2003-CF-61. This error was done because he was prose, and in handcuffs. (except original JOC sent to Circuit Court). Judge Cameron imposed 30 days in the County jail, NOT A FINE. Poirier had served over 9-months already on a 60-year Sentence.

Poirier also cited in his Motion 401 U.S. 715, 915 Ct. 1041, 28 L. Ed. 2d 434, 1971 U.S. LEXIS 152, United States v. United States Coin & Currency, for

Fifth amendment purposes. Next Poirier cited § 939.74, Wis. Stats. Time limitation on Prosecution. (Must Commence Within 6 years for felony, and 3 years for Misd.)

Poirier, was placed in TLU on 5/4/17 for Possession of Contraband - miscellaneous. 303.47 There was a Cellphone found in a double Cell. The Cellphone was not Poirier's. After serving 36 days Poirier waived his rights, and accepted 120 days. Poirier lives in a Continuing state of Anxiety. 92 S.Ct. 407, 404 U.S. 249, Wilwording v. Swenson, (U.S. MO. 1971).

ARGUMENT

Poirier claims, the State of Wisconsin Cannot increase a sentence once it has been served. Then about 13-years later come and impose a fine of \$1,189.

This was done of no filings done by Poirier. This was added to another Case No. 04-CF-19, and is Contrary to State and Federal law. Support is drawn from CHAPTER 163 Fed. R. Civ. P. [2011-2012] Fines, Penalties and Forfeitures 28 U.S.C. § 2462

Time for Commencing proceedings except as otherwise provided by an Act of Congress,

an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service is made thereon.

Furthermore the Circuit Court lacked jurisdiction because the statute of limitations § 939.74, Wis. State. Time limitations on prosecutions. s. 946.88 (1), Prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

Poirier Claims, 13 years is too late. The Circuit Court was content with 9 months already served and excluded the fine. § 939.51(3) fine or imprisonment, or both. Poirier did NOT even get an evidentiary hearing on this matter.

Since the state of Wisconsin has opened the doors for an attack on the Sentencing Scheme, it was illegal to sentence him using the facts of Case No. 03-CF-61 to enhance the conviction in Case No. 04-CF-19, and the sentence should be remanded. For support of this argument,

he relies on the language found at 825 F.2d 1111, 1998 U.S. App. LEXIS 7652, United States v. Shue, (Emphasis in Part): [¶11] where the defendant challenges one of several interdependent sentences (or underlying convictions) he has, in effect, challenged the entire sentencing plan. See United States v. Busic, 639 F.2d 940, 947 (3rd Cir.) Cert. denied, 425 U.S. 918, 101 S.Ct. 3055, 69 L.Ed.2d 402 (1981).

Poirier had the legitimate expectation of finality as to the original sentence on October 28, 2004, but was locked in the County jail on January 22, 2004, and came to prison on December 03, 2004. Then about 13-years later the sentence is increased by a fine. See (app., p. 8-9) Prison Trust Account Statement.

Poirier claims, that's a violation of the Ex Post Facto Law / Double Jeopardy Clause / Equal Protection of Law. This increase in sentence about 13-years later. For this Court to rule against Poirier, would be contrary to well established federal law of the Supreme Court of the United States.

Further support of an illegal sentence comes from 116 S.Ct. 1241, 517 U.S. 292, Rutledge v. U.S. (U.S. Ill, 1996) (Emphasis in Part): * 1243 (c) Because the Court adheres to the

presumption that Congress intended to authorize only one punishment, one of petitioner's * 1244 convictions, as well as its concurrent sentence, is unauthorized punishment [517 U.S. 294] for a separate offense and must be vacated under Ball, 470 U.S., at 864, 105 S. Ct., at 1673 P. 1251, 40 F.3d 879 (C.A. 7 1994), reversed and remanded STEVENS, J., delivered the opinion for a unanimous Court.

Poirier Claims, the above case is about the lower Court's adding on \$50 special assessment imposed, and amounts to a second punishment. In Poirier's Case Five \$70 (Court Costs as Wisconsin did) and One \$50 was added to his sentence. Now almost 13-years later a different judge wants to add a fine of \$1,189. This is an error in the law, and must be corrected.

Poirier Claims, for the Circuit Court about 13-years later to impose a fine is a violation of the law. Poirier asks this Court a QUESTION OF LAW. Is it the Due Process Clause / Ex Post Facto of Law / Double Jeopardy Clause Violation? Poirier U.S. Const. Art. I, §§ 1, 7, 8(1) and U.S. Const. Amendments 5, 8, 9 and 14th have been violated, and he DEMANDS REDRESS.

Poirier's argument is supported by 1055 Ct. 1668, 470 U.S. 856, Ball v. U.S. (U.S. Ct. 1985) the Court cannot or did not authorize pyramiding penalties Burton, 734 F.2d 965, 966 (CA4 1984).

C. The separate Conviction, apart from consequences that may not be ignored. For example the presence of two convictions on the record may delay the defendant's eligibility for parole or result in an increased sentence under a recidivist statute for a future offense. Moreover, the second conviction may be used to impeach the defendant's credibility and certainly carries the societal stigma accompanying any criminal conviction. See Benton v. Maryland, 395 U.S. 784, 790-791, 895 Ct. 2056, 2060, 2061, 23 L.Ed. 2d 707 (1969); Sibron v. New York, 392 U.S. 40, 54-56, 885 Ct. 1889, 1898-1899, 20 L.Ed. 2d 917 (1968). Thus the second conviction, even if it resulted in no greater sentence, is an impermissible punishment.

To retain his freedom, the defendant must obtain an acquittal on all charges: to put the defendant in prison, the prosecutor need only obtain a single guilty verdict. The prosecutor's ability to bring multiple charges increases the risk that the defendant will be convicted on one or more of those charges. The very fact that a defendant has been arrested, charged, and brought to trial on several charges may suggest to the jury that he must be guilty [470 U.S. 868] of at least one of those crimes.

Poirier was convicted on all 6 counts that arose out of the same transaction.

CONCLUSION

Poirier states, the state of Wisconsin has violated both the Wisconsin Constitution and United States Constitution. Wis. Const. Art. I, §§ 1, 7, 8⁽¹⁾, U.S. Const. Amendments 5, 8, 9 and 14th.

Relief can be granted as a starting point, under State v. Hackel, 2015 WI App. 37, 363 Wis.2d 656, 862 N.W.2d 904, 2015 Wis. App. LEXIS 214 (citing State v. Louis, 156 Wis.2d 470, 487, 457 N.W.2d 484 (1990); State v. Vannorivong, 2003 WI 41, ¶17, 661 N.W.2d 76.)

Poirier, would request this Court to rule that the Circuit Court order be reversed because Case No. 2003-CT-61 Sentence of 30 days in County Jail was served as 9-months, and the judge dismissed that case. Also return the money the D.O.C. has taken from his prison trust account. This tainted his present conviction even further.

Poirier would also request this Court pursuant to Chapter 809 Rules of Appellate Procedure § 809.84 Rule; Chapter § 785 Wis. State, allows a Court to sanction a party for disobedience, resistance or obstruction of the Court's authority. See Wis. State, § 785.01(1). Then § 785.04, Wis. State, authorizes a Court to impose as a contempt sanction the payment of a sum of money sufficient to compensate a party

as the result of a Contempt of Court. See Wis. State, § 785.04(1)(c). Poirier would request \$10 a day, and any other sanctions appropriate.

Poirier has to wait until his reply brief to answer questions contained in the Court Record received from the Clerk dated June 12, 2017 because the case stems from 03/03/2003 until April 03, 2017 when Poirier received the NEW order. That was 14 years, 1 month, 0 days ago. The claim is too stale.

Dated this 25 day of June, 2017

Respectfully Submitted;

Prose, Eric W. Poirier #840517
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Waupun, WI 53963

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APP., P. 1-2 Circuit Court Order, APRIL 03, 2017,
CASE NO. 2003-CT-61, BY HONORABLE
STEVEN R. CRAY.

APP., P. 3 Circuit Court Order, MAY 10, 2017, CASE NO.
2003-CT-61, Honorable STEVEN R. CRAY.

APP., P. 4-7 Circuit Court, JOC, November 04, 2004,
By Honorable RODERICK A. CAMERON, Case No.
2004-CF-19.

APP., P. 8-9 PRISION TRUST ACCOUNT STATEMENT.

APP., P. 10-11 CERTIFIED TRUST ACCOUNT STATEMENT
FOR 6-MONTHS.