

STATE OF WISCONSIN
C O U R T O F A P P E A L S
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CLERK OF COURT OF APPEALS
OF WISCONSIN

CASE NO. 2017 AP 931-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

(L.C.#2003-CT-0061)

Hon. Steven R. Cray, Circuit
Court Chippewa County

ERIC W. POIRIER,
Defendant-Appellant.

REBUTTAL OF DEFENDANT-APPELLANT

Now comes, Eric W. Poirier - Pro se, Appellant in the above entitled matter with his Rebuttal to the State's reply brief that he received on October 16, 2017 by first class mail because he's a prisoner, per order of this Court on October 6, 2017.

POSITION ON ORAL ARGUMENT & PUBLICATION

Appellant, does not agree with the Respondent Pp. 1. ¶1. Because the issues involved are the Constitutionality of the Wisconsin Statutes, and publication is necessary.

STATEMENT OF THE CASE

Appellant, partially agree's with the Respondent as to Pp. 1 ¶2 ; Pp. 2. That the matter commenced on 3 March, 2003, and the Hon. Thomas Sazama held an initial appearance.

On 20 June, 2003 Appellant entered a plea, and sentencing occurred 17 December, 2003. Appellant, does not remember the fine, But, remembers the 30-days in Jail.

Appellant, does not agree with Respondent as to Pp. 2¶1. Because on the same date, a judgment for Unpaid Fine/Forfeiture/Other was filed. fR: 34. Because he did not receive this information.

Appellant, agree's with Respondent because he concedes on Pp. 2 ¶ 2. That on April 03, 2017 the Hon. Steven R. Cray, signed an Order for Income Assignment for \$1, 189.00. That would be 0-Months, 29-Days, 14-years later.

Appellant, agree's with Respondent, as to Pp. 2. ¶ 3. Appellant argued that the Statute Of Limitations apply and that a Civil commitment cannot be based upon a criminal punishment.

Appellant, agree's with Respondent as to Pp.3. ¶1. That on May 10, 2017, the Hon. Judge Cray ruled against Appellant.

Appellant, agree's with Respondent as to Pp. 3 ¶ 2. Because he did not have the funds to file a copy with the Circuit Court, and was in Segregation, and the Waupun Correctional Institution would not give him a legal loan to prosecute this appeal.

STANDARD OF REVIEW

Appellant, agree's with the Respondent as to Pp. 3 ¶3. That this Court needs to address Judge Cray's factual finding that Judge Cameron did not hold that the fine and court cost portion of his sentence was not satisfied. State v. Williams, 2002 WI 1, ¶20, 249 Wis.2d 492,509, 637 N.W.2d 733,741.

Appellant, does not agree with Respondent as to Pp. 3 ¶4. Because allowing to withhold funds from another conviction has to be

a violation of ex post facto law, and making prison life more difficult than it was before Appellant started serving his sentence.

ARGUMENT

Appellant, does not agree with Respondent's argument, and Respondent concedes that this trial transcript is not part of the record.

Appellant, points to Wis. Stats. § 973.07 (2005) NOTES: Noted supplied by the State Of Wisconsin. The 6-month limit on commitments under this section is aggregated by the amount of time a defendant may be jailed for nonpayment of a fine. State v. Schuman, 173 Wis.2d 743, 496 N.W.2d 684 (Ct. App. 1993).

14. Obvious purpose of the provision in Wis. Stats. § 973.07 providing an alternative penalty of six months in jail if an original fine is not paid is to prompt or coerce defendants to paying their fines: thus, a court by necessity must have the authority to impose such a commitment consecutively to a jail time provision, or the commitment would not serve its prompting or coercive purpose. State v. Way, 113 Wis.2d 82, 334 N.W.2d 918, 1983 Wisc. LEXIS 3380 (Wis. Ct. App. 1983).

Appellant, does not agree with the Respondent as to Pp.5 ¶1. Because this is a question of law for this Court to decide.

Appellant, agree's with Respondent as to Pp. 5. ¶ 2. That the conversation primary topic dealt with jail of 30 days, and that he has been in jail for nine months and wanted the case dismissed.

Appellant, does not agree with Respondent as to Pp. 5. 3. The sentence was for 30 days and no fine.

Appellant, does not agree with the Respondent as to Pp. 5 ¶5.

Appellant claims, from the information he has received from the Clerk of Court's In Re: Notice of Compliation of the Record dated: June 12, 2017, the Complaint in Case No. 2003-CT-61 was filed on 03/03/2003 (R:2:1-7). Judgment for unpaid fine/forfeiture/other (illegible original filing date). (R:34:1) date 02/26/2004

Order (R:35:1-2) date 04/03/2017

04-03-2017

03-03-2003

01-00-0014 years later he received a fine of \$1,184.

This was abasurd, and Appellant files an Inmate Complaint/Investigation Into Judicial misconduct to the Wisconsin Department Of Justice AG - Brad Schimel P.O. Bos 7857 Madison, Wi 53707. Appellant, asking for intervention onto this matter.

On June 16, 2017, he received an answer, and a CCAP of Case No. 2003-CT-61 and verification the DOC is taking the monies out of Criminal Case No. 2004-CF-19.

This cannot be correct because at a Preliminary Hearing on February 02, 2004, Appellant appeared with SPD appointed counsel in Case No.(s) 03-CT-61 ; 04-CF-19. Because another charge was added to the case, Case No. 04-CF-24.

According to the Chippewa County Booking Sheet, Appellant started serving Case No. 03-CT-61 on 1/22/03 and sentence was completed on 2/13/04. That has to be a typo. Because that is the day Appellant was arrested on the NEW CHARGES Case No. 04- CF-19 ; 04-CF-24. See Id. at (2-2-04,Ti.Tr.Pp. 25 line 7-25),

" The Court: Anything else, Mr. Gay ?

Mr. Gay: (Prosecutor) That's all I have for this file. We also have a preliminary hearing on 04-CF-24.

The Court: Okay. Do you want to present any evidence on this case ?

Ms. Meade: (defense counsel) No your Honor.

The Court: Okay. The State has established probable cause for the attempted first degree intentional homicide and we will

order Mr. Poirier bound over for further proceeding on that.
Lets do the next case 04-CF-24.

Mr. Gay: We would call Deputy Dutton. CURTIS DUTTON Sworn in. Mr. Gay: Was Mr. Poirier sceduled to report to jail any time ? A: His report date was 1/6 of '04. Q: Did he report to jail that date ? A: No he did not. Q: Dis he report to jail any time after that ? Pp. 27. A: No. He did not. Line 11-20, I'm going to have this marked as an exhibit and ask if you can identify that. please ? A: Yes, there is a judgment of conviction for Eric W. Poirier, Case No. 2003-CT-61. It's the same one I received for a Thirty-day sentence. Q: Does it indicate when he's to report ? A: Begin date for the thirty-day sentence was 1/6 of '04. Q: Is that the Case Number in which he failed to report ? A: Yes.

Mr. Gay: We move for admission of Exhibit 1.

The Court: Leave Bond.

(Pp. 29 line 13-16), " Ms. Meade: Your Honor, I'll file with the Court a Dwmmand For Discovery, Demand For Speedy Trial. I gave Mr. Gay a copy.

The Court: I assume that means 90 days ?

Ms. Meade: That's correct, Your Homor.

(Pp. 30 line 30 ; 31 line 1-8), - The Court: That will -- I'll put the attempted homicide case first on the calender and the failure to report to jail the second case, although you actually haven't filed a Speedy Trial demand on that one. And the Demand For Discovery and Inspection has the wrong case number on it. I am going to change it, if I could. Any problems with that Ms. meade ? Ms. Meade: No. Your Honor. "

The next proceeding, on February 17, 2004, Case No.(s) 04-CF-19 and 04-CF-24 Id. at (2-17-04,Ti.Tr.Pp. 2 line 21-25).

(Prosecutor): Mr. Gay: Your Honor, also ask that on the 4-CF-24 file, that would have had the repeater also.

The Court: You have to file an amended information. Mr. Gay: Yes, sir. "

The next Court appearance was March 18, 2004, where the Court asked his SPD appointed counsel. Id. at (3-18-04,Ti.Tr.Pp. 12 line 7-25 ; 15 line 20-22), " The Court: So are you saying that the most serious charge make it difficult for the defendant to testify on the lesser serious charge ?
Ms. Meade: Correct. "

Out of March 18, 2004, trial transcript Pp. 9 Case No.(s) 04-CF-19 ; 04-CF-24 The Hon. Roderick A. Cameron made the Prosecutor-Roy Gay aware of the fact by way of his Mororandum Decision dated: April 12, 2004, See Exhibit 47 Habeas Corpus, " Poirier is likely right about counts 5 and 6 if the jury finds him guilty on count The Judge knows the statutes are under the umbrella of Chapter 940 Crimes Against Life And Bodily Security.

Appellant claims, Counts 5 and 6 are lesser-included crime of Count One because they carry less incarceration time also. Counts 5 and 6 are substantially alike when they are part of the same general transaction or episode.

Furthermore, at the Motion Hearing 3-18-04,(Pp. 12 line 7-25), " The Court: What counts do you want severed ? Ms. Meade: I think I asked for three and four. The Court: You also say Count 1. Ms. Meade: Yeah, I might have had -- I just have count three and four 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 three and four and one 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. Ms. Meade: Mr. Gay has made that clear to me since. The Court: So that is not an issue.

The Court: (Pp. 13 line 1-25), " The real issue is to sever counts three and four, the auto theft and burglary. Ms. Meade: Correct.

The Court: Why do you think those should be severed ?

Ms. Meade: Your Honor, first of all, I think that Mr. Poirier could -- particularly on count two, we are going to assert a defense that the vehicle was abandoned without damage and that would reduce the charge to a misdemeanor. The Court: That's still the law. Ms. Meade: I'm sorry. The Court: That is still the law. Ms. Meade: The new law. The Court: They put it back in the statutes again. Ms. Meade: Right. The Court: This Legislature can't make its mind, apparently. Ms. Meade: Yes. That's the law in effect at this time. The Court: Okay. That used to be the law and they got rid of it for awhile. Ms. Meade: They came in with the second Truth In Sentencing, I believe."

The Judge tells defense counsel (Ms. Meade) her analysis. (Pp. 15 line 7-19). The Court: So you are saying that the more serious charges make it difficult for the defendant to testify on the lesser serious charge ? Ms. Meade: Yes.

Judge denies motion to sever. " Pp. 21 line 18-22."

Judge is going to decide multiplicitious argument before the trial. Id at (Pp. 26 line 8-11).

Appellant, did not get a chance to defend against this action.

Plus, the fact that on February 17, his SPD appointed counsel demanded a speedy trial did not disapate on Case No. 03-CT-61.

Appellant, relies on Wis. Stats. § 961.555 Forfeiture Proceedings (1) and (2) must be commenced within 30 days. The Circuit Court lost competency pursuant to § 961.555(2)(b).

Appellant, tried to look up Case No. 03-CT-61 up on the Prison Computer, and all he found was " No documents were found for your FOCUS search terms." In other words, the case is too stale.

Appellant, disagree's with Respondent as to Pp. 6 ¶ 1. Because when Appellant received the Circuit Court Record on 6-15-2017 # 34 Judgment for unpaid fine/forfeiture/other (illegible original filing date) 02/26/2004.

#35 Order 04-03-2017

04-03-2017

02-26-2004

1- 7- 13 Years later

#36 1-5 Letters: E.W.P. 04-25-2017 Poirier objection Motion.

As far as Appellant can figure out since he does not have any of the paperwork since 13 years has past, and he's been in prison all that time is, § 939.50 Classification of felonies and §939.51 Classification of Misdemeanors (3)(a) a fine not to exceed \$10,000 or imprisonment not to exceed 9 months or both.

The Judge did not include the fine. He gave Poirier credit for time served as part of this sentence in Case No. 04-CF-19 because Case No. 03-CT-61 that was converted into Case No. 04-CF-24, was for 30 days in the County Jail. Because Appellant, did not pay the fine his Driver's License was Suspended.

According to CCAP that Appellant received from AAG-Rebecca A. Paulson on June 16, 2017 in response to Appellant's Inmate Complaint/Investigation Into Judicial Misconduct that stated, " Perhaps I can shed some light on your situation. On February 26, 2004, the trial court ordered you to pay \$1,184. with the notation, " suspension of driver license for failure to pay."

CCAP

#51 03-03-2003 - Criminal Complaint - Judge Sazama Thomas

#14 12-19-2003 Judgment Of Conviction

#13 Suspension of driver license for failure to pay \$1,198-02-26-2004.

#19 12-17-2004 Sentencing Hearing. Appellant defense attorney Mark Mullen.

Appellant claims, because he has been in Prison all this time he cannot find any of the paperwork, and has to depend on the State to provid it.

The Honorable Steven R. Cray's order is 04-03-2017. Operating While Under the Influence § 346.63(1)(a), Wis. Stats. is a Class U Misdemeanor.

04-03-2017 Steven R. Cray's order

03-03-2003 Thomas Sazama's Order

01 - 00 -14 Years later served with an additional fine for Case No. 2004-CF-19.

Appellant claims, the next talk of Case No. 03-CT-61 was at Sentencing October 28, 2004. Id at (Pp. 41 line 10-25 ; Pp. 42;43), Appellant, was Pro se, and in Handcuff's, " The Defendant: Okay. Your Honor, one other issue. The Case -- Case No. 04-CF-25, I believe, it was, Your Honor, failure to report to jail for 30 days, I would ask that this be dismissed because I have already served nine months in the County Jail.

The Court: I'll find that you satisfied that sentence. The Defendant: Pardon ?

The Court: I will rule that you have already satisfied that sentence, so the sentence is concluded and the case is over. The Defendant: Oh, all right.

Prosecutor, Roy Gay: Which case are you talking about ?

The Court: Failure to report to jail.

Mr. Gay: He has not been convicted yet.

The Court: I thought he was.

The Defendant: Yes, Your Honor, I have been convicted of it and sentenced and have the paperwork right here.

The Court: Do you have a Case Number, Mr. Poirier ?

The Defendant: Yeah, if I can find it. Come here. Help me with this will you ?

Mr. Gay: I believe he is talking about the drunk driving conviction.

The Court: The case is still pending Mr. Poirier.

The Defendant: No Your Honor. I've been sentenced on --

The Court: Your thinking of the drunk driving charge.

The Defendant: Pardon ?

The Court: I think you're confusing it with the drunk driving charge.

The Defendant: That's the entire case.

The Court: Well, you had a drunk driving conviction where you didn't report to jail and then, because you didn't report to jail as a separate offense. Do you want to proceed on that case, Mr. Gay ?

Mr. Gay: I'm still trying to decide in my mind what I'm going to do with that. It may depend upon what comes out of the post-conviction hearing.

The Court: That case is still pending. That's all I can tell you. Would you agree with that, Mr. Gay ?

Mr. Gay: I would assume. He already did the sentence.

The Court: I will treat the drunk driving sentence satisfied by Mr. Poirier and other questions, Mr. Poirier ? "

Appellant, asked the Court if he could be held in the Countyjail until postconviction, and that was granted. But before post-conviction hearing he was wisked off to prison on December 03, 2004. At Sentencing the Honorable Roderick A. Cameron was presiding.

Furthermore, at Sentencing the Prosecutor, Roy Gay stated, Id. at " Pp. 26 line 13-19 " Mr. Gay: His drinking has intensified over the years. He's now receiving OWI's. He had a fleeing conviction. We're lucky he hasn't killed somebody while driving intoxicated. To him, this is a game. He has no remorse and, nearest I can tell, no conscience. As long as he is able to roam about Chippewa county and drink freely, everybody is in danger."

Appellant claims, for support that the Circuit Court cannot impose a fine past the statute of limitations period is found as a starting point in the case of 2000 WI 37, 234 Wis.2d 528, 609 N.W.2d 786, 2000 Wisc. LEXIS 35, State v. Oakley, OVERVIEW: Circuit Court could not require payment of an old, unpaid fine that was imposed on prior sentence as a condition of probation for new conviction exposed defendant to incarceration for more than six months.

Appellant, only has the information provided by the Assistant Attorney General - Rebecca A. Paulson on May 11, 2017 to base his argument from Wisconsin Circuit Court Access (WCCA) that on 12-17-2003 Sentencing hearing by the Hon. Thomas Sazama, handed down the sentence.

Appellant, did not know he was Re-Sentenced on 9-02-2003.

The Hon. Roderick A. Cameron, on 9-03-2003 Return on Warrant. This occurred because Appellant was in the Chippewa County Jail on new charges, and could not post Bond.

Then the Hon. Steven R. Cray issued an order on April 03, 2017 for \$1,184.00.

Further support, that the Circuit Court could not impose a fine or repeater statute as they did in this case is found in State v. Van Riper, 2003 WI App 237, 267 Wis.2d 759, 672 N.W.2d 156, 2003 Wisc. App. LEXIS 925, (Emphasis in Part): [*P13] Thus, the cumulative effect of Wideman and Spaeth is as follows: (1)^{HN6} the proof requirement of Wis. Stats. § 973.12(1), the repeater statute in the criminal code, do not apply in OWI prosecutions (Wideman); (2) a DOT teletype is competent proof of a defendant's prior convictions (Spaeth).

Appellant, did challenge the decision of the Circuit Court adding this fine of Case No. 2003-CT-61 to Case No. 2004-CF-19 on

April 07, 2017 by way of his Income Assignment Order Written Objection Irreparable Harm Caused (R:36:1-5). The trial court abused its discretion when the Hon. Thomas Sazama sentenced Appellant on December 17, 2003 (R:28:1). For support of this claim, he relies on the language found in *State v. Cleary*, 142 Wis.2d 936, 417 N.W.2d 197, 1997 Wisc. App. LEXIS 4144, (Emphasis in Part): HN6 Sentencing is a discretionary judicial act and reviewable on appeal in the same manner that all [*13] discretionary acts are reviewed *McCleary v. State*, 49 Wis.2d 263,277, 182 N.W.2d 512,519 (1971).

" [T]here must be evidence that discretion was in fact exercised. Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rational founded upon proper legal standards. As we pointed out in *State v. Hutnik*, (1968), 39 Wis.2d 754,764, 159 N.W.2d 733, ' ... there should be evidence in the record that discretion was in fact exercised and the basis of that exercise of discretion should be set forth. '"

Appellant claims, the Hon. Roderick A. Cameron did say, " The Court: I will treat the drunk driving sentence satisfied by Mr. Poirier and any other questions, Mr. Poirier ? " For a Third Judge to come 13-years later with a fine to be added to another case is a violation of the Court to add to another Criminal Case.

Appellant, does not agree with Respondent as to Pp. 6 ¶¶1;2 or Pp. 7 ¶¶1;2 or Pp. 8 ¶¶¶ 1; 2; 3. Because all this argument is discussed above, and supported by case law and statutes.

Appellant claims, because of the page limitations pursuant to Rules of Appellate Procedure § 809.19(8)(c)2. Thirteen Pages Appellant has had to restrict his argument.

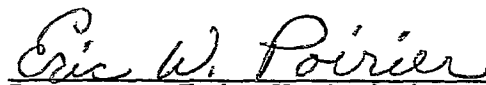
Appellant, does not agree with Pp. 8 Footnote ⁵ because the Department Of Corrections is taking the monies from his Prison Trust Account Statement Id. at " App., P. 9. " Furthermore, the Department Of Corrections is changing their policy again. See attached " Appendix A. " This affects all inmates.

CONCLUSION

WHEREFORE, the Appellant, for reasons stated above, respectfully requests this Court to grant the relief he requestes.

Dated this 19th day of October, 2017

Respectfully Submitted;



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Cc: ADA Roy Gay