

WISCONSIN COURT OF APPEALS DISTRICT IV

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IAN HUMPHREY,

Appellant, Petitioner

v.

Case No.: 2018AP481

County of Lafayette

Appellee, Respondent.

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**APPELLANT'S BRIEF**

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## **STATEMENT OF ISSUES**

1. Is the Trial Court's cumulative behavior: Denying telephonic appearances, ordering an indigency hearing after receiving notarized CV-410A forms, and refusing to impose an alternative sentence, egregious enough to vacate the suspension?
2. How can the Trial Court issue a suspension in excess of the limits set by Wisconsin Statutes?

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Oral argument is not necessary. The County received numerous motions, requests, and pleas to cease their unlawful conduct; their responses provided hollow excuses for their behavior, and it is well documented. Publication is necessary so that other Courts understand that aggressive collection tactics are more than unacceptable, they are contrary to law.

## **STATEMENTS OF THE CASE**

This appeal arises out of the Lafayette Circuit Court's order, after being found indigent as it is defined in Wisconsin law, after rejecting telephonic appearance requests, and after denying requests for alternative sentence, suspending my driving privileges in Wisconsin on 1/18/2017, after having suspended them from 2/23/2017 to 8/16/2017.

This is a novel case, where the Trial Court was confronted with law offering protections and solutions for people too poor to pay judgments, and chose instead to pursue aggressive collection tactics, finally ordering a suspension in excess of the law.

## **PROCEDURAL BACKGROUND**

The first submission of a CV-410A from me to the Trial Court occurred on 4/28/2016. The County interpreted it as a petition for representation. On 5/23/2016, the Trial Court found me indigent, but denied me a fee waiver for transcripts.

On 2/23/2017, the Trial Court issued a judgment for unpaid fine, and suspended my driving privileges in Wisconsin for up to one year.

On 3/3/2017, I filed a motion explaining I could not afford to pay the judgment, due to poverty. On 3/28/2017, the Trial Court held a hearing “pursuant to Wisconsin Statute 800.095(1)(b)2.c”, where the Trial Court denied my motion for non-appearance.

On 4/5/2017, the Trial Court ordered another hearing. On 4/17/2017, I filed a motion explaining that I could not afford to appear in person, and requested a telephonic hearing. The Trial Court denied this request on 4/19/2017, and held the hearing on 5/2/2017 without me.

On 6/6/2017, I challenged the Trial Court’s vague assertion that I wasn’t complying with local rules regarding my telephonic appearance requests; nothing fruitful developed.

On 8/16/2017, my Wisconsin driving privileges were reinstated, and the Trial Court issued a payment plan I couldn’t afford. On 8/31/2017, I filed a motion for alternative sentence, and on 10/10/2017 the Trial Court denied it.

On 1/18/18, the Trial Court ordered the suspension of my Wisconsin driving privileges for a year. A timely notice of appeal was filed on 1/24/2018.

### **STATEMENTS OF FACT**

1. From 2/23/2017, to 8/16/2017, the Lafayette Circuit Court ordered a suspension of my Wisconsin Driving privileges.
2. From 1/18/2018 on, the Lafayette Circuit Court has suspended my Wisconsin Driving privileges by ordering a period of suspension of 1 year from 1/18/2018.
3. I have received nothing to indicate my Wisconsin Driving privileges have been valid from 2/23/2017 to 8/16/2017, or since the Lafayette Circuit Court ordered my privileges suspended on 1/18/2018
4. I filed a motion for alternative sentence on 8/31/2017, the Lafayette Circuit Court denied it on 10/10/2017.



## **ARGUMENT**

### **I. INTRODUCTION**

The actions taken by the Trial Court are an egregious example of discretionary abuses; The Trial Court went beyond discretion and preference, and guided a series of procedural events with the clear intention to circumvent legal protections for the some of the most vulnerable people in society. In addition, this Trial Court has exempted itself from telephonic hearings, expecting me to afford an appearance at great cost, or accept its' continued penalties in excess of the law in Wisconsin, while contemporaneously refusing to order a community service obligation upon request and after submission of numerous CV-410A forms.

### **II. "Local rules"**

The denial of each of my requests for a telephonic appearance, due to the expense and distance required to make appearances, are accompanied by statements referring to a failure to comply with "local rules"; This was in reply to motions I filed on 3/3/17, 4/17/17, and 6/6/2017 to appear telephonically, and regarding the vagueness and finality of these telephonic denials. The short story here is that the Trial Court believes it doesn't have to grant telephonic appearances if their in-house District Attorney doesn't agree to them, or at least that was the verbal reason; the Trial Court did not document its' reasons for denial, instead opting to provide the vague excuse that my requests failed to comply with "Local rules". This behavior did not halt, even when the Court gained the knowledge that I could not afford to appear.

“Local rules” is the vague assertion that fails to discuss anything from 807.13(2)(c)1-8. It would be a non-sequitur, and horribly unfair, to permit lack of stipulation determine the mode of appearance, and Wisconsin Statute 807.13(2)(b) reads specifically that “The parties so stipulate; or” which does not leave it to the adverse position of the other party.

I contend here that the vague assertion of “Local rules” was insufficient to deny me a telephonic appearance in light of the circumstances. The Trial Court received communication from me indicating I could not afford the journey to appear at a hearing, and denied me a practical solution for what I allege was a deliberate move to guide procedural events which would allow the County to aggressively attempt to collect a judgment.

### **III. The power of summons**

After finding me indigent and denying my requests for telephonic appearance, the Trial Court attempted to summon me for a hearing regarding my claim that I was unable to pay the forfeiture. It attempted to do this through Wisconsin Statute 800.095(1)(b)2.c by ordering a hearing on 3/28/2017. I contend that the Trial Court did not need to conduct this hearing, and ordered one only to create the groundwork for the suspension now in place.

If there was a smoking gun for professional misconduct in the form of judicial activism, I’d say this referencing of 800.095(1)(b)2.c would be it; The Trial Court reveals its’ intentions by citing its’ desired outcome, to trigger a procedural event after which they will no doubt rationalize denying me the protections conveyed under the law. The Trial Court would later reject my requests for alternative sentence, and threaten me with jail in its’ order on 10/10/2017.

The base Statute and none of the subsections establish the ability of the Trial Court to summon people who have already submitted notarized CV-410A forms, and the subsection itself speaks only to a consequence, not a means to create the circumstance.

The CV-410A form itself requires the petitioner to provide their marriage status, gross income, assets, vehicles, household income, and expenses. Wisconsin Statute 814.29(1)(d)3 provides that in determining whether a person meets the definition of poverty, the Court can review: “the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902 (2)”. Because the Trial Court had received numerous completed CV-410A forms, starting with the first one it received on 4/28/2016 which it improperly construed as a petition to be appointed by counsel, it is unclear what the Trial Court would have achieved with an indigency hearing; I contend instead it was held simply because the Trial Court knew it was unlikely I would be able to appear, and that a failed appearance would be grounds for more aggressive collection practices in the future.

This attempt by the Trial Court to create a circumstance after the fact, specifically to deny me protections by combining it with my inability to afford an appearance, which the Trial Court was also clearly aware of, is professional misconduct. There is no grey area, or doubt left from reviewing the motions and denials that the Trial Court was guiding a series of procedural events to this end, and thus the suspension cannot be justified by this behavior.

#### **IV. The Trial Court's denial of alternative sentence is contrary to law**

The Trial Court's denial on 10/10/2017 of my motion for alternative sentence proffers that the County simply doesn't have a community service program, and that I live too far away for such an arrangement to be practical. Both posits are rubbish, and come with no supporting law.

Neither Fitchburg, nor Verona Municipal, nor Madison, EVER gave me this much guff over ordering a community service obligation. I was simply given a deadline by the clerk, and was required to provide verifiable hours from any non-profit agency I did the work for. The County's claim that that distance is an issue is unsupported by law, as is its' contention that it can skip out on alternative sentencing as a whole.

800.095(1)(a)5:

"During the period of operating privilege suspension under this paragraph, the defendant may request the court to reconsider the order of suspension based on an inability to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d). The court shall consider the defendant's request. If the court determines that the inability to pay the judgment is because of poverty, the court shall withdraw the suspension and grant the defendant further time to pay or withdraw the suspension and order one or more other sanctions set forth in this subsection, including community service." (emphasis added)

Here, the County has failed to provide anything other than weak excuses as to why it stubbornly refuses to order a community service obligation, and that issue precedes the suspension it ordered.

**V. Simply un-enforceable**

The final order of the Trial Court is unenforceable because it would exceed the maximum amount of time the Trial Court can suspend my license by law. From 2/23/2017 to 8/16/2017, about 6 months, this Trial Court had suspended my license already. It suspended my license again on 1/18/2018, for a year; which would be in excess of what the Statute limits. On 7/25/18, it will have been a total year that the Lafayette Circuit Court has suspended my driving privileges in Wisconsin.

800.095(1)(a)3m provides:

“If the court terminates the defendant's suspension as the result of the defendant's agreement to a payment plan or community service and the defendant is later suspended because he or she defaults on that plan or service, the new suspension shall be reduced by the amount of time that the suspension was served before being terminated by the court.”

800.095(1)(a)3:

“If the judgment remains unpaid at the end of the one-year suspension, the court may not order a further suspension of operating privileges in relation to the outstanding judgment.”

The law is unequivocal here. The order of the Trial Court cannot be upheld because it is in excess of what the law permits the Trial Court to do, wherefore it must be vacated.

**CONCLUSION**

This Trial Court ignored the laws which protect some of the most vulnerable people in society, egregiously, and clearly misconstrued the law to obtain an outcome desirable by the

sitting Judge's own perspective, which is in stark contrast to the laws we all are counting on the judiciary to hold true. The Trial Court's actions, in guiding a steep challenge to a struggling litigant in a civil-municipal matter are reprehensible, and must be struck down. On a technical conclusion, the judgment is unenforceable as it was ordered, wherefore it should be vacated.

Dated: July 9, 2018

Ian Humphrey

s/ Ian Humphrey