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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I
Case No. 2018AP001987-CR
CLERK OF COURT OF APPEALS
OF WISCONSIN

State of Wisconsin,
Plaintiff-Respondent,
v.
Jeffrey E. Olson,
Defendant-Appellant-Petitioner.

APPELLANT'S BRIEF-IN-CHIEF

Court of Appeals Case No. 2018AP001987-CR
Milwaukee County Case Number LC # 1994CM410611
Judge Elisa C. Lamelas, Trial Court
Judge Michael P. Maxwell, Post-conviction Court

This court has refused to provide Olson with a copy of the Court Record. Olson has been deprived of his Constitutional right to a meaningful opportunity to be heard and to Due Process. His right to appeal has been rendered meaningless by the refusal by this court to provide him with a copy of the Court Record.

Jeffrey E. Olson, DOC # 286463
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P. O. Box 351
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Issues Presented

- I. Did the trial court err when it denied Olson's Motion to withdraw the plea entered without holding a hearing on the evidence presented by Olson first?
- II. Was Olson denied due process of law when the trial court entered an order extending the term of probation without notification to Olson as is required by Wisconsin Statute § 973.09(3)?
- III. Did the Department of Community Corrections commit an act of fraud upon the court when it submitted a fraudulently signed "stipulation and waiver of hearing" to the court?
- IV. Does Olson owe any outstanding supervision fees from the underlying case or the fraudulent extension of the term of probation?

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Table of Authorities

State vs. Hays 173 Wis. 2d 439, 446-47, 496 N.W. 2d 645 (1992).....4

Other Authorities Cited

Wisconsin Statutes (1994) § 973.09(3)(a).....3,5,8
Wisconsin Statutes (1994) § 940.19.....3
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Brief Statement of Criteria for Review

A probationer is entitled to notice of, and an opportunity to be heard at said hearing, when the State seeks to extend the term of probation. A trial court which fails to follow mandatory statutory procedures when extending a term of probation has abused its discretion, and the subsequent improper court order extending a term of probation is reviewed under the abuse of discretion standard.

Statement of Facts and Of the Case

On or about December 5, 1994, Olson entered a plea of guilty to one count of Battery/DV, a violation of § 940.19 Wisconsin Statutes (1994). The trial court accepted this plea and pursuant to the plea agreement, sentenced Olson to a two-year (2 year) term of probation with stipulations that Olson complete an Anger Management program. [R:7-1]

The court imposed and stayed *** days of County jail imprisonment. Olson completed the Anger Management program, and subsequently revoked himself, on or about April 1996, to serve the imposed jail term instead of the remaining period of probation.

Subsequent to serving the remaining jail time, in August 1996, Olson was contacted by the probation agent previously assigned to him, and notified that he would be receiving a refund of the monies he had paid for "supervision fees."

At no time was Olson notified that the Department of Community Corrections, ("DCC"), was seeking an extension of the term of probation. At no

time did Olson sign or submit a waiver of the hearing that is required under § 973.09(3)(a), Wisconsin Statutes (1994).

More importantly to this matter, at no time was Olson ever notified of any warrant for failure to report to a probation agent—a warrant that would have been issued because at no time after May 1996 did Olson ever report to a probation agent. Olson had numerous contacts with various law enforcement agencies throughout Wisconsin and several other states.

Olson, when finally informed by the Department of Corrections that the term of probation had been extended, filed a motion for a hearing, explaining that he had never been notified of the extension hearing. That motion was denied, and Olson subsequently filed the motion to withdraw his plea. This was also denied.

Argument

I. Did the trial court err when it denied Olson's Motion to withdraw the plea entered without holding a hearing on the evidence presented by Olson first?

The answer to this question must be yes.

Both the language of § 973.09(3)(a) and the case law establish that a probationer who is facing extension of probation must be afforded due process before entry of an extension order. This was established in State vs. Hays 173 Wis. 2d 439, 496 N.W. 2d 645 (1992).

In Hays, the court outlined the due process rights to be accorded a probationer at an extension hearing, (1) to be notified of the hearing and the reasons that are asserted in support of the request to extend probation, (2) to be present at the hearing, (3) to be given the chance to cross-examine witnesses, present witnesses and other evidence and the right of allocution, (4) to have the extension based on true and correct information, and (5) to be

represented by counsel if confinement to jail is a potential result of the extension. id. at 447.

In this case, Olson was not afforded the basic process due under § 973.09(3)(a) and the case law. He was never provided notice of the hearing or the reasons asserted in support for the extension request. He was never given the opportunity to be heard or to question the State's witnesses, or to present his own witnesses and other evidence to challenge the extension request. Olson was never notified of any "outstanding" financial obligations.

At no time during the term of probation, did Olson ever sign a "Petition and Stipulation to Waive Appearance and Hearing".

Moreover, Olson was never provided with a copy of the court's order extending the probation.

In fact, Olson only learned that the term had supposedly been extended when the balance he allegedly owed for "supervision" fees showed up on his Inmate Trust Account monthly statement nearly nine years into the sentence he is serving for unrelated convictions. [Exhibit 1 Affidavit of Jeffrey Olson]

II. Was Olson denied due process of law when the trial court entered an order extending the term of probation without notification to Olson as is required by Wisconsin Statute § 973.09(3)(a)?

The answer to this question must be yes, for the exact same arguments made in section I above.

The only time Olson received notice regarding the extension of the term of probation was in November 2016, when the probation supervision fees appeared on his Inmate Trust Account monthly statement for the first time. Olson has been incarcerated since 2006, including almost four months on probation, and the Department of Corrections never notified him of any outstanding supervision fees until November 2016.

From February 1995 until March 1997, Olson resided at the same address he was at when he commenced serving the original term of probation. This address was known to the agent assigned to the case, and was contained in the DCC file maintained by the agent. Olson was also employed at the same property management company as a maintenance technician.

Moreover, Olson had the same phone numbers, both landline and cellular, and these numbers were contained in the file and known to the agent.

Olson never received any notice from the trial court regarding an order extending the term of probation.

Olson did receive a telephone call from the agent in either late July 1996 or early August 1996. The agent called Olson to inform him that he was to receive a refund of the monies he had overpaid for supervision fees. The agent wanted to verify the address the check was to be sent to. In addition, a month or so later, Olson did receive a check from the State.

At no time during this call, did the agent Olson was talking to ever disclose to Olson that the DCC was seeking an extension to the term of probation. Olson averred this, in an affidavit, to the circuit court when he filed his motions with the circuit court.

At no time during the term of probation, did Olson ever sign a "Petition and Stipulation to Waive Appearance and Hearing".

III. Did the Department of Community Corrections commit an act of fraud upon the court when it submitted a fraudulently signed "stipulation and waiver of hearing" to the court?

The answer to this question must be "Yes."

As Olson has averred, he did not sign and submit a waiver of the hearing that is required for probation to be extended. Olson had absolutely no knowledge that the DCC was seeking an extension of the term of probation. [Exhibit 1]

Someone within the DCC submitted a forged and/or fraudulent waiver form to the circuit court in a successful attempt to completely circumvent the requirements of Olson's Federal and State Constitutionally and Statutorily protected rights to Due Process of Law.

At no time when the agent assigned to Olson's case contacted him about the refund was any mention made of the DCC's decision to seek an extension of the probation.

By submitting a forged and/or fraudulent and/or fraudulently obtained waiver form to the circuit court, the State, through the Department of Community Corrections, committed an egregious act of fraud upon the court and upon Olson.

IV. Does Olson owe any outstanding supervision fees from the underlying case or the fraudulent extension of the term of probation?

The answer to this question must be "No."

The legislation that established supervision fee for probationers was passed and signed into law July 26, 1995, and the Act states quite clearly that the effective date of the legislation was January 1, 1996. 1995 Wis. AB 150, 1995 a. 27.

The Act does not contain any of the necessary language that is required in order for the Act's mandates to be applied retroactively.

Olson was placed on probation on December 5, 1994, more than a full year before supervision fees became effective. In fact, Olson was required by his agent to pay supervision fees, however, in August 1996, the agent called Olson at his place of employment and informed him that he was going to be receiving a refund of the monies he had paid. Several weeks later Olson received a check from the State of Wisconsin refunding the amount Olson had paid in supervision fees.

The State claims that the term of probation was extended by court order for a period of six, (6), months.

Yet Olson has received documents from the Department of Community Corrections that show supervision fees being charged every month from 05/05/1996 up until 01/06/1998, a period of seven, (7), months longer than they claim the probation was extended for. [Exhibit 2]

As Olson has asserted, he was discharged from the probation in April 1996, so the DCC/State is actually charging Olson for supervision fees for a period of twenty-one, (21), months, an act for which they are not legally allowed to do.

The documentation Olson received from the Department of Community Corrections also clearly shows that the term of probation was not extended as the Department now claims. [Exhibit 2]

Conclusion

The trial court erred when it denied Olson's Motion to withdraw the plea he entered in the original proceeding. Olson entered the plea under the presumption that the State would act in good faith and keep its end of the deal.

The State, unbeknownst to Olson, extended the term of probation without following the procedures mandated in § 973.09(3). The State, unbeknownst to Olson, charged Olson \$30⁰⁰ per month in supervision fees, for a total \$630⁰⁰. This was later reduced to \$420⁰⁰ through some clerical conversion.

Olson was never notified that the DCC was filing a petition to extend the term of probation, Olson was never given the process due to him under § 973.09(3)(a), Olson never signed a waiver of the hearing required, Olson never submitted such a waiver, and Olson never received notice that the probation had been extended.

Not until almost 20 years had passed did the State inform Olson that the term of probation had been extended by court order-----long after the State destroyed the probation records that would prove that there was no legal reason for the term to be extended.

Olson's right to the hearing required under § 973.09(3) and the Due Process of Law clauses of both the Federal and State Constitutions was violated. Olson does not owe supervision fees for the underlying criminal case.

This matter should be remanded to the circuit court for a hearing, where the court should allow Olson to withdraw his plea. In addition, the extension order should be vacated on the grounds of Due Process and statutory violations, and where the court should issue an order requiring the State and the DOC/DCC to refund any monies it has already taken from Olson and remove the debt from Olson's inmate account statement and record.

This court has refused to provide Olson with a copy of the Court Record. Olson has been deprived of his Constitutional right to a meaningful opportunity to be heard and to Due Process. His right to appeal has been rendered meaningless by the refusal by this court to provide him with a copy of the Court Record.

Signed this 4th day of March, 2019 at Waupun Wisconsin.

Respectfully submitted,



Jeffrey E. Olson, DOC # 286463
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Waupun Wisconsin 53963-0351

Certification of Form and Length

The undersigned certifies that this Petition complies with the type-volume limitations of Wis. Stat. § 809.19(Rule); the typeface requirements of Wis. Stat. § 809.19(Rule); and the type-style requirements of Wis. Stat. § 809.19(Rule).

- a) This Petition contains 2251 words in total, with 1835 words in the Issues, Arguments, and Conclusion sections, excluding the footnotes;
- b) This Petition has been prepared in a proportionally spaced typeface of 12 points;
- c) This Petition has been prepared using Bookman Old Style type-font; and
- d) This Petition was prepared using Microsoft Word®

Certification of Mailing

The undersigned certifies that a copy of this Petition and Appendix was placed in the institution mailbox with a DOC-184 Disbursement Form attached for First Class Postage, and that the package was addressed to:

Criminal Appeals Unit
Wisconsin Attorney General's Office
P. O. Box 7857
Madison Wisconsin 53707-7857

Respectfully submitted,

4/16/19



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