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

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

APPELLANT'S REPLY BRIEF

Court of Appeals Case No. 2018AP001987-CR
Milwaukee County Case Number LC # 1994CM410611
Judge Elsa 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
Petitioner, pro se
% Waupun Correctional Institution
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Statement of Facts and Of the Case

Appellant refers this court to the Statement of Facts and Case as contained in the Original Brief filed by Olson and the Response Brief filed by the State.

ISSUES

I. Olson is a pro se appellant, and as such, is entitled to have his filings construed more liberally than those filed by members of the legal profession.

II. The Response Brief filed by the District Attorney does not address the actual issues brought forward by Olson.

III. The motion(s) filed by Olson in the trial court both contained sufficient assertions of fact, requiring the court to hold an evidentiary hearing.

IV. The trial court did not comply with the *Nelson/Bentley* standard.

V. Irregardless of how the trial court decided the motions filed by Olson, the original sentencing court erroneously used its discretion when it extended the probation to collect a debt.

Argument

I. Olson is a pro se appellant, and as such, is entitled to have his filings construed more liberally than those filed by members of the legal profession.

The United States Supreme Court has ruled that pro se litigants are entitled to have their filings and pleadings construed more liberally than those filed by legal professionals. See *Haines vs. Kerner 404 U.S. 519, 520 (1972)*

It is undisputed that Olson is a pro se litigant.

The United States Supreme Court has stated that a court may not recharacterize a pro se litigant's pleadings. *Castro vs. U.S. 540 U.S. 375,377 (2003)*. This holding must, by necessity, apply to the State as well.

The State, in its Response Brief, recharacterized the issues Olson presented to this court. This is impermissible as a matter of law. In Wisconsin, the Supreme Court held "In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *State vs. Howe*

2017 WI 18, 373 Wis. 2d 468, 893 N.W. 2d 812, citing to *Greenlaw vs. United States 554 U.S. 237, 243-44 (2008)*

The State and the court may not recharacterize or even rephrase the issues Olson presented, in order to suit their desire to dismiss the appeal. Based on the State's and the court's complete refusal to provide Olson with a copy of the record so that Olson could perfect his appeal, it is apparent to Olson that this court will find some flimsy excuse to deny relief.

It would be an egregious abuse of discretion for this court to accept and rely on the State's recharacterization and rephrasing of the issues briefed by Olson when deciding this appeal of an impermissible extension of probation to collect a debt.

II. The Response Brief filed by the District Attorney does not address the actual issues brought forward by Olson.

The State did not address the issues raised by Olson. The State did not refute Olson's assertion that he did not sign a "Waiver and Stipulation" form, as the record allegedly contains. The State repeatedly stated that Olson did not provide evidence ***from the record*** to support his arguments and assertions.

To remind the State and this court, this court and the State have repeatedly refused to provide Olson with the record, depriving him of the "evidence" the State says Olson did not provide. The refusal to produce evidence raises the presumption that the evidence is detrimental to the case of the party refusing to produce the evidence. Refusing to produce evidence natural to the administration of justice is an admission of want of merit of the asserted defense. *Hauer vs. Christon 43 Wis. 2d 147, 150-52 (1969)*.

The States Appendix 101 and 102 show that the probation was discharged in May 1997, having allegedly been extended after Olson allegedly signed a "Waiver and Stipulation" form to the extension. Olson asserts that this is either a typographical error or a data entry mistake. Olson's motions and filings in the sentencing/trial court asserted and affirmed that he did not sign such a form. Olson further presents that the DCC provided Olson with documentation

that conclusively prove that the probation was not extended. This court was presented with that proof with the appendix in the Brief-in-Chief filed by Olson.

III. The motion(s) filed by Olson in the trial court both contained sufficient assertions of fact, requiring the court to hold an evidentiary hearing.

The motions Olson filed with the trial court both contained sufficient facts, proven by affidavits signed under threat of penalty for perjury and contempt of court, which required the court to hold an evidentiary hearing on the matter. *Nelson vs. State 54 Wis. 2d 489, 497 (1972)*

The affidavits filed by Olson conclusively show that Olson did not sign a Waiver of Hearing form; did not report to any probation agent after he was discharged in May/June 1996; that there was no warrant for absconding-which would have been issued if Olson was required to report to an agent if the probation had been extended; that Olson was never informed of the alleged extension of his probation; that Olson had numerous police contacts in the years following his 1996 discharge from probation; and that he actually received a refund of the monies he had paid-which would not have happened if he allegedly owed money to the State.

The trial court did not conduct the necessarily required hearing to examine the evidence or hear witnesses. Olson swore under oath with his affidavits and would have testified to the same statements in a courtroom. The State never produced the Waiver and Stipulation form, so that Olson could show the fraudulence of it.

IV. The trial court did not comply with the *Nelson/Bentley* standard.

The motions Olson filed with the trial court both contained sufficient facts, proven by affidavits signed under threat of penalty for perjury and contempt of court, which required the court to hold an evidentiary hearing on the matter. *Nelson vs. State 54 Wis. 2d 489, 497 (1972)*

Under this standard, when a motion alleges facts that, if true would warrant the relief requested, the court is required to hold an evidentiary hearing.

The affidavits filed by Olson conclusively asserted that Olson did not sign a Waiver of Hearing form; did not report to any probation agent after he was discharged in May/June 1996; that there was no warrant for absconding-which would have been issued if Olson was required to report to an agent if the probation had been extended; that Olson was never informed of the alleged extension of his probation; that Olson had numerous police contacts in the years following his 1996 discharge from probation; and that he actually received a refund of the monies he had paid-which would not have happened if he allegedly owed money to the State.

The trial court did not conduct the required hearing, abusing its discretion.

V. Irregardless of how the trial court decided the motions filed by Olson, the original sentencing court erroneously used its discretion when it extended the probation to collect a debt.

Irregardless of the alleged Waiver and Stipulation form allegedly signed by Olson, the sentencing court erroneously abused its discretion when it extended the term of probation to collect a debt. *State vs. Davis 127 Wis. 2d 486, 499-500 381 N.W. 2d 333 (1986) (extending probation is unreasonable when the only reason is to collect a debt), State vs. Olson 222 Wis. 2d 283 (1998) (Wisconsin courts have repeatedly warned that the criminal justice system should not be used to perform the functions of debt collection)*

The record, as Olson can only assert on belief since this court has refused to provide Olson with a copy of, is devoid of any reason other than to collect a debt, for the probation to have been extended.

As the State asserted in its Statement of the Case, Resp. Brief page 6, ¶ 3, the State Probation Agent, Marcie Adams requested the court to extend the probation for six months in order to collect a debt from Olson.

Based on the prevailing laws at the time, it was impermissible for the request to even have been made to extend the probation, let alone for the court

to have actually granted the request. See *State vs. Davis 127 Wis. 2d 486, 499-500 381 N.W. 2d 333 (1986) (extending probation is unreasonable when the only reason is to collect a debt).* The issue of using the criminal justice system to collect debts was long decided, and those holdings were and still are, prevailing precedent.

Even if the extension had been granted for a legitimate reason, such as Olson did not complete the required Anger Management course, the DCC charged Olson supervision fees that did not legally apply to him since they were enacted after he was placed on probation, because the law enacting the fees was not retroactive. Moreover, even if Olson did have to pay supervision fees, the DCC charged supervision fees for eight months ***after*** the DCC claims Olson was discharged from the alleged extension. [Def. Brf. Exhibit 4]

CONCLUSION

Olson entered a plea of guilty to the charge of Battery/Domestic violence on the presumption that he would receive a term of probation of two years, with mandatory Anger Management courses to be completed within that period. Olson completed the required course early, and since he had no outstanding probation violations, reporting to his agent once a month, or less, requested to either be discharged or revoked so as to serve the jail time remaining in lieu of the probation. This was a period of less than 40 days, that with "good" time, would end up being less than 30 days.

Olson did not learn of the extension to the term of probation for nearly 20 years, when the DOC presented him with a *fait accompli* and an outstanding *"debt" of over* $500.00 for supervision fees.

The probation records were destroyed in January 2002, five years after Olson was discharged from probation, in accordance with State statutes and agency rules. *This could not have occurred if Olson was legally under probation* supervision until May 1997.

Olson did not sign a Waiver form and does not owe supervision fees. Moreover, even if Olson was extended for a legitimate reason, the requirement to pay supervision fees would not have applied to Olson due its non-retroactive

effect. Moreover, even if he was required to pay supervision fees, he would only have had to pay them for the six months of the alleged extension, not the 14 months he is being billed for.

The State, *in the persona of the Department of Community Corrections,* arbitrarily extended the improperly obtained six-month extension to one of almost ***twenty-one*** months, based on the documents Olson received from the Department. [Def. Brf. Exhibit 4]

The Wisconsin Supreme Court and Courts of Appeal have repeatedly held that probation cannot be extended in order to collect a debt. The criminal justice system is not a debt collection agency.

The court abused its discretion when it extended the term of probation for the sole reason of collecting a debt. The court again abused its discretion when it based the extension on a fraudulently obtained Waiver and Stipulation form, one not signed by Jeffrey E. Olson.

The court further abused its discretion when it did not hold the evidentiary hearing it was required to hold under prevailing legal precedents. And the trial court abused its discretion when it denied Olson's original motions asking for a hearing and withdrawing his plea to the original charge based on a egregious breach of the sentencing perpetrated by the State. *Blackledge vs. Allison 431 U.S. 63; 76-82 (1977) [alleged breach of plea deal requires evidentiary hearing, breach of plea deal requires allowing withdrawal of guilty plea]*

The State, in its response, stated that Olson did not provide any support from the record to prove his arguments. This is an outlandish claim by the State, because the State, and this court, refused to provide Olson with a copy of the record, as has been vociferously stated by Olson.

The State cannot refuse to provide Olson with the record and then use the *defense that Olson did not provide proof from the record.*

Olson has proven that he presented sufficient facts in his original motions to the trial court, that required that court to hold an evidentiary hearing into the matters raised—*the DCC submitted a fraudulent Waiver and Stipulation form,* requested and obtained an extension to the term of probation for an illegitimate

reason and purpose, and that the State has billed Olson for fees he was not legally required to pay because the law requiring the payment of fees did not have the necessary retroactive effect. Olson has further proven that the State billed Olson for fees well in excess of the alleged six-month extension.

The prevailing law, as presented by Olson in this appeal, require this court to either reverse the trial courts rulings denying Olson's original motions and remanding for proceedings consistent with the laws and procedures for the administration of justice, or to reverse the original order extending the term of probation and vacating any and all supervision fees billed to Olson.

Olson does not owe these supervision fees and it is imperative for the administration of justice that they be vacated and any monies illegally collected from Olson to be returned to him.

This court should also order an investigation into the submission of the fraudulent and fraudulently obtained Waiver and Stipulation form by the Department of Community Corrections and Agent Marcie Adams. That the form was fraudulent is an assertion made by Olson that the State did not refute, thereby admitting that it was fraudulent.

4-13-19

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Jeffrey E. Olson,
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MEMORANDUM OF LAW

This court has repeatedly refused to provide Olson with a copy of the record, depriving Olson of a meaningful appeal on the issues presented. The United States Supreme Court has held that an indigent defendant is entitled to a copy of the record in order to perfect an appeal. The Court has stated that

> " . . . Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal laws. . . . Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts."

Griffin vs. Illinois 351 U.S. 12, 18-19 (1956)

The Wisconsin Court of Appeals, District I, has held that "A criminal defendant has a due process right to access to a transcript of the trial proceedings for purposes of an appeal." *State vs. Leach 180 Wis. 2d 469 (1993)*

This courts repeated refusals to provide Olson with a copy of the record is a clear deprivation of Olson's Due Process right to a meaningful appeal. The knowing deprivation of a defendants right to Due Process of Law, ***by the appellate court itself***, warrants certification of the entire appeal and the Due Process violations, to the Wisconsin Supreme Court. In the least, this court should recuse itself from the appeal on the grounds that it has demonstrated a clear and overwhelming bias against Olson and the issues he presented.

Due to the fact that this court has refused to provide Olson with a copy of the record, it must accept as true Olson's repeated assertions that the Waiver and Stipulation form the State alleges was submitted by the probation agent was forged and is fraudulent.

4 Aug 19

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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 Brief contains 2568 words in total, with 2269 words in the Issues, Arguments, and Conclusion sections, excluding the footnotes;
b) This Brief has been prepared in a proportionally spaced typeface of 12 points;
c) This Brief has been prepared using *Bookman Old Style* type-font; and
d) This Brief was prepared using Microsoft Word®©

Certification of Mailing

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

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Respectfully submitted,

4 Aug 19

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