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STATEMENT OF ISSUES

- 1) Whether the Circuit Court erred in their decision to deny Mr. LaFave-LaCrosse's motion for transcripts and fees

DECISION: Court finds ...Motion for Waiver of the Cost of Preparing the Transcript is DENIED

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

No oral argument is necessary. The briefs should fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of this Court's time or cost to the parties. See Wis. Stat. 809.22 (2) (b).

This case does not meet with criteria for publication. See Wis. Stat. 809.23 (1). The Court's opinion should not be published.

STATEMENT OF THE CASE

1. Description of the nature of the case

This is a civil proceeding case with respect to traffic regulations. This appeal case is in conjunction to pending appeals, App # 2020AP001120 and App# 2020AP001121. This portion under appeal is regarding the Trial Courts DENIAL of Mr. LaFave-LaCrosse's Motion for Waiver of the cost of Preparing the Transcript.

2. Procedural status

On 01/18/2020, Mr. LaFave-LaCrosse was cited for violation of Wis. Stat. 346.63(1)(A) OWI (1st) (L.C. #2020TR68) and 343.305(9)(a) Refuse to take test for Intoxication after arrest. (L.C. #2020TR69) (R:1; 1-1 AP#2020AP1466)(P-App 1)

On 03/13/2020, Trial Date and Hearing. Trial Court found Mr. LaFave-LaCrosse guilty on both cases. Order signed same date. (R:3; 1-2 AP#2020AP1466)(P-App 2-3)

On 04/02/2020, Mr. LaFave-LaCrosse filed Motion to Reconsider and Motion for New Trial- Reconsideration with Trial Court. (R:5; 1-3 AP#2020AP1466) (R:5; 1-4 AP#2020AP1467)(P-App 4-10)

Motion hearing held on 05/15/2020. (No record or order filed) (R:6; 1-1 AP#2020AP1466)(P-App 11)

On 06/26/2020, Mr. LaFave-LaCrosse filed Notice of Appeal with Trial Court. (App. # 2020AP1120 & App. # 2020AP1121) (R:12; 1-1 AP#2020AP1466) (P-App 12)

On 6/26/2020 Mr. LaFave-LaCrosse signed and sent Petition for Waiver of fees/Costs – Affidavit of Indigency to Supreme Court-Court of Appeals District III filed on 06/29/2020.

On 6/26/2020, Mr. LaFave-LaCrosse filed Motion for Waiver of the Cost of Preparing the Transcript with Circuit Court. (R:11; 1-1AP#2020AP1466)(P-App 13)

On 07/03/2020, Court of Appeals Order GRANTS waiver of fees. (R:16; 1-3 AP#2020AP1466)(P-App 14-16)

On 07/06/2020, Mr. LaFave-LaCrosse delivers Statement of Transcript to trial Court with instruction to have Court Reporter sign, when Trial Court makes decision on Motion to Waive the Cost of Preparing the Transcript. Trial Court filed in record. (R:14; 1-3 AP#2020AP1466)(P-App 17-19)

On 07/09/2020, Mr. LaFave-LaCrosse filed Motion to Extend Time to File Statement of Transcript with Court of Appeals. (R:18; 3-4; AP#2020AP1466)(P-App 22-24)

On 07/17/2020, Trial Court filed Order Denying Defendant's Motion for Waiver of the Cost of Preparing the Transcript. (R:19; 1-1 AP#2020AP1466)(P-App 27)

On 07/23/2020, Court of Appeals GRANTS Motion to extend time to file Statement of Transcript. (R:20; 1-1 AP#2020AP1466)(P-App 28)

On 07/29/2020, Mr. LaFave-LaCrosse filed Motion for Waiver of the Cost for preparing the Transcript with Supreme Court-Court of Appeal. (R:22; 1-4 AP#2020AP1466)(P-App 29-32)

On 08/13/2020, Court of Appeals filed Order with instruction on filing new Notice of Appeal regarding Circuit Court DENIAL order. (R: 24; 1-4 AP#2020AP1466)(P-App 33-35)

On 08/25/2020, Mr. LaFave-LaCrosse filed Notice of Appeal with Trial Court. (R:26; 1-2 AP#2020AP1466)(p-App 36-37)

On 08/25/2020 Mr. LaFave-LaCrosse signed and sent Petition for Waiver of fees/Costs – Affidavit of Indigency to Supreme Court-Court of Appeals District III.

On 08/25/2020, Mr. LaFave-LaCrosse filed Motion to Stay with Trial Court for Appeal NOS #2020AP1120 and #2020AP1121. (R:27; 1-2 AP#2020AP1466)(P-App 38-39)

On 08/27/2020, Trial Court filed Order Denying Defendant's Motion to Stay (R:29; 1-2 AP#2020AP1466)(P-App 40-41)

STATEMENT OF FACTS

Mr. LaFave-LaCrosse was cited for violation of Wis. Stat. 346.63(1)(A) OWI (1st) and 343.305(9)(a) Refuse to take test for Intoxication after arrest. Trial hearing was held, no physical evidence submitted to court, testimony given by City of Rhinelander witness and by Mr. LaFave-LaCrosse, judgement entered guilty, no facts, findings or conclusion of law filed with Order signed and filed on 03/13/2020. (R:1; 1-1 AP#2020AP1466))(P-App 1)

Mr. LaFave-LaCrosse believes that the trial court erred with respect that the trial courts judgement holds no application of law and that the City of Rhinelander failed to support their obligation of burden of proof. Mr. LaFave-LaCrosse filed Motion to Reconsider and Motion for New Trial -Reconsideration on 04/02/2020 (Amended versions filed 04/23/2020). . (R:5; 1-3 AP#2020AP1466) (R:5; 1-4 AP#2020AP1467)(P-App 4-10)

Motion hearings held, Mr. LaFave-LaCrosse attempted to present motions and oral argument to the court, Court overrides and DENIES Motions. The Trial Court has not filed facts, findings, conclusion of law and/or order on hearing.

Mr. LaFave-LaCrosse filed Notice of Appeal along with a Motion for Waiver of the Cost for preparing the Transcript with trial court as indicated on PG#15 in the Guide to Appellate Procedure for the Self Represented. Within said Motion, Mr. LaFave-LaCrosse presented the trial court with facts of indigency. (R:11; 1-1 AP#2020AP1466)(P-App 13)

“The defendant believes to be under poverty level at this time, he is currently unemployed and a full time student. The defendant owns no assets and has limited income for living expenses. The defendant also filed Petition for waiver of fees/costs – Affidavit of Indigency with the Clerk of Supreme Court- Court of Appeals.”

Trial Court DENIED Motion for Waiver of the Cost for Preparing the transcript. In accordance with the language in the Order.....(R:19; 1-1 AP#2020AP1466) (P-App 27)

“The above-captioned actions are civil proceedings relative to traffic regulation, an appeal of which, pursuant to sec. 809.40, Stats., is subject to the requirements of secs. 809.01 to 809.26, Stats.”

Mr. LaFave-LaCrosse filed Motion for Waiver of the Cost of Preparing the Transcript with Court of Appeals District III. Within said motion Mr. LaFave-LaCrosse addressed the need for transcript of both hearings. (R:22; 1-4 AP#2020AP1466) (P-App 29-30)

“The transcripts are necessary for this appeal to adequately account and recall information that is needed to present of this case with accuracy.”

Motion also address fact of indigency.

“The appellant filed Petition for Waiver of fees/costs-Affidavit of Indigency with the Supreme Court- Court of Appeals, District III on June 26, 2020. Within said Affidavit the Appellant does receive services from a civil legal services program, which is based on indigency. Program: Public Defenders office presented to Circuit Court of eligibility on 06/24/2020. The Appellant is currently unemployed, a full time student, owns no assets and has limited income for living expenses.”

Court of Appeals Order instructed LaFave-LaCrosse to file new Notice of Appeal regarding the trial courts denial of Motion for Waiver of the Cost of Preparing the transcript. (R: 24; 1-4 AP#2020AP1466)(P-App 33-35)

Mr. LaFave-LaCrosse filed Notice of Appeal on 08/25/2020. Mr. LaFave-LaCrosse argues the Trial Court’s denial of Waiver of the Cost for preparing the Transcript and costs was in error and the transcripts for both hearings are needed to present case accurately and support Mr. LaFave-LaCrosse position that the trial court erred in judgement against him. (R:26; 1-2 AP#2020AP1466)(p-App 36-37)

ARGUMENT I

THE CIRCUIT COURT’S DENIAL OF MOTION FOR WAIVER OF THE COST OF PREPARING THE TRANSCRIPT DOES NOT COMPLY WITH THE DICTATES OF WIS. STAT. SECTION 814.29 AND APPROPRIATE CASE LAW AS THE SAID TRANSCRIPT IS NECESSARY TO PROCEED THEREFORE MUST BE OVERTURNED AND GRANTED.

I. LANGUAGE OF ORDER

The Circuit Court ordered: (R:19; 1-1) (P-App 27)

“The defendant, Zachary T. LaFave-LaCrosse, has filed a Motion for Waiver of the Cost of Preparing the Transcript relative to his appeal of the judgements entered by the court in the above-captioned actions. The above-captioned actions are civil proceedings relative to traffic regulation, an appeal of which, pursuant to sec. 809.40, Stats., is subject to the requirements of secs. 809.01 to 809.26, Stats. Section 809.11(4), Stats., provides that, in an appeal of this type, the appellant- in this case, the defendant, Mr. LaFave-LaCrosse- is responsible for payment of the cost of preparing the transcript. The defendant has pointed no provision in secs. 809.01 to 809.26, Stats. – nor is this court aware of any- that provides for waiver of the cost of preparing the transcript. Therefore.....IT IS HEREBY ORDERED that the defendant’s Motion for Waiver of the cost of Preparing the Transcript is DENIED.”

The Court of Appeals ordered: (R:24; 1-4) (P-App 33-34)

“A request for waiver of the transcript fee, however, is a circuit court matter. To that end, the motion indicates that the circuit court has denied his motion for waiver of the transcript fee. If LaFave-LaCrosse seeks review of the circuit court order denying his motion for free transcripts, he must timely file a notice of appeal for that order.” “In addition to establishing one’s indigency, a party seeking a transcript fee waiver must establish that he or she has an arguably meritorious claim for relief on appeal ant that any issues of arguable merit necessitates a transcript for appellate review. See Girouard v. Cir. Ct. for Jackson Cty., 155 Wis. 2d 148, 454 N.W.2d 792 (1990); see also, State ex. Rel. Rilla v. Dodge Cty. Cir. Ct., 76 Wis. 2d 429, 433 251 N.W.2d 476 (1977).

II. SUPPORT FROM THE RECORD

It is believed that the Trial Court does not object to the fact that Mr. LaFave-LaCrosse is indigent.

Mr. LaFave-LaCrosse filed Petition for Waiver of fees/Costs- Affidavit of Indigency with Notice of Appeal on 06/26/2020.

Court of Appeals entered Order on 07/03/2020 GRANTING waiver of fees.

Order states (R.:16; 1-1)(P-App 14) :....

“The petition establishes indigency for purposes of prosecuting this action.”

Mr. LaFave-LaCrosse filed Petition for Waiver of fees/Costs- Affidavit of Indigency with Notice of Appeal on 08/25/2020.

Court of Appeals entered Order on 08/31/2020 GRANTING waiver of fees.

In support of the need for transcript on Appeal No. 2020AP1120 & 2020AP1121; the Trial Court is aware that the testimony is the only evidence that supports the Trial Courts findings of facts of judgement at trial hearing 03/13/2020 and Motion hearing 05/15/2020.

In supporting the argument at hand, the Circuit Court ORDER dated 08/27/2020, affirms that the transcript is in need to affirm and justify the conclusion of law applied. (R:29; 1-2 AP#2020AP1466)(P-App 40)

THE ORDER “In this case, the defendant’s appeal appears to be based solely on his disagreement with the court’s findings of fact, which were based on this court’s credibility determinations relative to the testimony given by the City of Rhinelander’s witness and the defendant.”

III. SUPPORT FROM STATUTE

814.29 Security for costs, service and fees for indigents.

814.29(1)

(a) Except as provided in sub. (1m), **any person may commence, prosecute or defend any action or special proceeding in any court, or any writ of error or appeal therein, without being required to give security for costs or to pay any service or fee, upon order of the court based on a finding that because of poverty the person is unable to pay the costs of the action or special proceeding, or any writ of error or appeal therein, or to give security for those costs.**

(b) A person seeking an order under par. (a) shall file in the court an affidavit in the form prescribed by the judicial conference, setting forth briefly the nature of the cause, defense or appeal and facts demonstrating his or her poverty.

(d) The court shall make a finding of poverty and issue an order under par. (a) if the affidavit demonstrates any of the following:

1. That the person is a recipient of means-tested public assistance, including aid to families with dependent children, relief funded by a relief block grant under ch. 49, relief provided by counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps or benefits received by veterans under s. 45.40 (1m) or under 38 USC 1501 to 1562.

2. That the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency.

3. That the person is otherwise unable, because of poverty, to pay the costs of the action, proceeding or appeal or to give security for those costs. In determining the person's ability under this subdivision to pay or give security for fees and costs, the court shall consider the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902 (2).

IV. SUPPORT FROM CASE LAW

Wisconsin's Constitution; Article 1, Section 9:

“Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.”

Girouard v. Cir. Ct. for Jackson Cty., 155 Wis. 2d. 148, 454 NW 2d 792 -

Wis: Supreme Court 1990

“The question is whether Girouard, an indigent in a civil case, is entitled to a waiver of transcription fees on an appeal to the court of appeals if, in addition to being an indigent, he can satisfy the trial judge that the person "believes that he or she is entitled to the redress that he or she seeks in the. . . appeal." The answer is unequivocally "yes." Accordingly, we reverse.”

The statute on its face provides that:

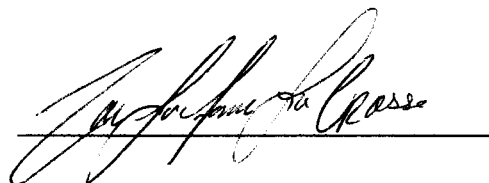
Any person may commence . . . any action . . . in any court . . . or appeal therein, without being required to . . . pay any . . . fee, upon filing in the court . . . his or her affidavit that because of his or her poverty the person is unable to pay the costs of the action . . . or appeal

CONCLUSION

The Circuit Court erred in DENIAL of Waiver of Transcript fees:

The Circuit Courts denial of waiver of fees to have transcript prepared and distributed to parties prohibits Mr. LaFave-LaCrosse's right to access the legal system. One's socioeconomic status should not prohibit his right to seek out justice freely. The Courts denial does not support Wisconsin's Constitution nor Wisconsin State Statutes. The Circuit Court's failed to apply the appropriate law application. Mr. LaFave-LaCrosse is asking the Court to grant Waiver of the Transcripts for both hearings heard on 03/13/2020 and 05/15/2020 in Oneida County Circuit Court and include costs for duplicates and service on all parties and respectfully requests all relief the Court deems appropriate.

RESPECTFULLY SUBMITTED this 4th day of January, 2021.




Zachary T. LaFave-LaCrosse

Defendant-Appellant (Pro Se)

ORIGINAL and 3 copies of the
foregoing sent by U.S. mail for filing
with the Clerk of the Court of Appeals
for the State of Wisconsin this 6th day of
January, 2021 and 1 copy to:

Oneida County District Attorney Office Attn: Steven Michlig
PO Box 400; 1 S. Oneida Ave
Rhinelander, WI 54501
Plaintiff-respondent

Oneida County Clerk of Courts
PO Box 400; 1 S. Oneida Ave
Rhinelander, WI 54501


By: 

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a proportional serif font.

The length of this brief is 2,742 words.

Date: 01/04/2021

Signature: 

CERTIFICATION OF MAILING

I certify that the original and 2 copies of this brief and appendix were deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on 01/06/2021. I further certify that the brief and appendix were correctly addressed, and postage was pre-paid.

Also 1 copy of brief and appendix were sent to:

Oneida County District Attorney Office Attn: Steven Michlig
PO Box 400; 1 S. Oneida Ave
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Date: 01/06/2021

Signature 