

No. 97-1076

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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STATE OF WISCONSIN,

FILED

PLAINTIFF-RESPONDENT,

May 8, 1998

v.

CLERK OF  
COURT OF APPEALS  
OF WISCONSIN

BARBARA A. BUETTNER,

DEFENDANT-APPELLANT.

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**ERRATA SHEET**

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PLEASE TAKE NOTICE that the attached pages 2 and 3 are to be substituted for pages 2 and 3 in the above-captioned opinion which was released on April 9, 1998.

Schedule II controlled substance in violation of § 961.41(b), STATS.<sup>1</sup> She contends that the trial court erred in denying her motion to enlarge the time to file motions for postconviction relief and in deciding her postconviction motions without an evidentiary hearing. She also contends that the sentencing court violated § 967.08, STATS., in conducting the plea hearing and sentencing by telephone. For the reasons we explain below, we exercise our discretionary powers of reversal and remand to the trial court for further proceedings on the motions.

### BACKGROUND

The complaint charging Buettner with delivery of a Schedule II controlled substance was filed on January 28, 1994. On April 19, 1994, a court proceeding took place with the judge sitting in Dodge County, the prosecutor in Green Lake County appearing by telephone, and Buettner and defense counsel in Waushara County appearing by telephone.<sup>2</sup> The hearing began with the court stating its understanding that Buettner had previously entered a plea of not guilty to the information. Defense counsel corrected the court, explaining that only the initial appearance and bond setting had occurred; the defendant had not yet entered a plea. Defense counsel then waived the preliminary hearing and the reading of

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<sup>1</sup> Buettner was charged with violating § 161.41(1)(b), STATS., 1993-94. This section was amended and renumbered. *See* 1995 Wis. Act 448, § 323.

<sup>2</sup> The complaint was filed in Waushara County. The court ordered that a special prosecutor be appointed and the district attorney from Green Lake County was appointed. Upon Buettner's motion for a substitution of judge, the Honorable Joseph E. Schultz was assigned to the case, and his office was in Dodge County.

the information on behalf of Buettner, and Buettner entered a no contest plea to the information.<sup>3</sup>

In response to the court's question, the prosecutor explained what the State would prove, and defense counsel stated that there was a factual basis for the plea, as stated in the probable cause section of the complaint. When responding to further questioning by the court, defense counsel informed the court that Buettner had completed and signed a guilty plea and waiver of rights questionnaire and he would mail it to the judge's office.<sup>4</sup> The court then directed its questions to Buettner. She answered that she did execute the guilty plea and waiver of rights questionnaire; she was satisfied with the representation of her attorney; she graduated from high school in 1974 and had continuing instruction on the computer system through her job; and she understood that in pleading no contest (which, the court explained, was "really just about the same as a plea of guilty"), she was relieving the State of the obligation to prove her guilt beyond a reasonable doubt before a jury of twelve persons.

Next, the court asked Buettner if she had any questions. Defense counsel stated that Buettner had a question for him. Their discussion took place off the record, and defense counsel then informed the court that Buettner had no

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<sup>3</sup> It is unclear from the record what type of proceeding was contemplated when the April 19, 1994 hearing was scheduled. The application for a judicial assignment, made in response to Buettner's request for a substitution of judge, states that she waived the time limits for holding the preliminary hearing, and that the next activity scheduled or to be scheduled was the preliminary hearing. However, from various comments of the court during the proceeding, it appears that the court had been informed that Buettner wished to enter a plea of no contest or guilty pursuant to a plea agreement and to be sentenced at the proceeding.

<sup>4</sup> The record indicates that a plea questionnaire was filed with Waushara County circuit court on April 19, 1994.