

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 6, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP3024-CR

Cir. Ct. No. 2002CM283

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLIE SISLO,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Bayfield County:
ROBERT E. EATON, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Charlie Sislo appeals an order that he pay jury fees after he pled no contest to disorderly conduct pursuant to a plea agreement entered

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

on the day the jury trial was set to take place. He argues that because he was later allowed to withdraw his guilty plea and the judgment against him was vacated, the order to pay jury fees was also vacated. We conclude that the order to pay jury fees is separate from his judgment of conviction and therefore we affirm the circuit court's determination that he remained responsible for the jury fees.

BACKGROUND

¶2 Sislo was charged with disorderly conduct and attorney Sam Fillippo was appointed to represent him. At a status conference, Fillippo advised the court that Sislo wanted a jury trial.² On the trial date, Sislo informed the court that the parties had reached an agreement wherein he would plead no contest and the State would recommend a \$100 fine plus \$209 in court costs. The court proceeded with a colloquy with Sislo to ensure that he understood the charge and the penalty that could be imposed on conviction. The court also asked Sislo if he understood the contents of the plea questionnaire he had signed. The questionnaire indicated that the maximum penalty would be “30 days jail; \$500.” However, the correct penalty was ninety days in jail and a \$1,000 fine. The court did not advise Sislo of the correct penalty.

¶3 The court accepted Sislo's plea and found him guilty of the charge. It also ordered Sislo to pay jury fees, pursuant to WIS. STAT. § 814.51, because the jury trial was cancelled at the last minute. The jury fee amounted to \$1,238.75, which Sislo was to pay in installments of \$40 per month.

² Sislo was not present at the status conference.

¶4 Sislo subsequently moved for an order to vacate the part of the judgment ordering him to pay jury fees, or that he be allowed to withdraw his plea because he was not advised of the correct potential penalty. Regarding the jury fee, Sislo argued that it was Fillippo's fault the plea was made the day of trial because Fillippo was involved in another case and was unable to meet with Sislo until the night before the scheduled trial.

¶5 The court denied the motion regarding jury fees. It concluded that it was not going to determine who was at fault. The fact remained that Sislo requested a jury trial and it was called off the day of the scheduled trial. Therefore, Sislo was responsible for jury fees. However, the court also found that Sislo did not understand the maximum penalty at the time of the plea, so it granted Sislo's motion to withdraw his plea.

¶6 Sislo was appointed new counsel and again entered a no contest plea. He told the court that he now understood the maximum sentence. At the hearing, Sislo again brought up the issue of the jury fees, but the court responded that it was a collateral issue separate from his guilt or innocence on the charge. The court found Sislo guilty and sentenced him to pay \$80 plus costs, the same sentence as in the earlier judgment. In a separate order, the court again assessed the jury fees.

¶7 Sislo filed another motion to vacate the jury fee order. He argued the court did not have the authority to assess the fee because the prior order was vacated and the new judgment did not mention the fee. The court denied the motion, again noting that the jury fees are independent from the judgment of conviction and that that part of the prior judgment was not vacated.

DISCUSSION

¶8 It is undisputed that Sislo accepted the plea agreement within the statutory “2 business days prior to the time set by the court for the commencement of the trial.” See WIS. STAT. § 814.51. That section provides:

The court shall have discretionary authority in any civil or criminal action or proceeding triable by jury to assess the entire cost of one day’s juror fees for a jury, including all mileage costs, against either the plaintiff or defendant or to divide the cost and assess the cost against both plaintiff and defendant, or additional parties plaintiff or defendant, if a jury demand has been made in any case and if a jury demand is later withdrawn within 2 business days prior to the time set by the court for the commencement of the trial. The party assessed shall be required to make payment to the clerk of circuit court within a prescribed period and the payment thereof shall be enforced by contempt proceedings.

However, Sislo argues the circuit court erroneously exercised its discretion when it assessed the jury fees. He contends he is being punished for the negligence of his attorney and that if anyone should pay the fee, it should be his attorney.

¶9 WISCONSIN STAT. § 814.51 contemplates that jury fees are assessable in the discretion of the circuit court. We review a circuit court’s discretionary act only to determine whether the circuit court considered the facts of record, and reasoned its way to a rational, legally sound conclusion. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). Here, the circuit court determined that nothing in the statute required it to determine fault. The trial was requested on behalf of Sislo, and Sislo had notice that he may be assessed the jury fees if he cancelled the trial within two days of the trial. Therefore, the court concluded that it was appropriate to require Sislo to pay the fees when he cancelled the jury trial on the day the trial was scheduled. We are

satisfied that the court properly considered the facts of record and rationally applied § 814.51 to those facts. Therefore, it was within the court's discretion to assess Sislo the jury fees.

¶10 Alternatively, Sislo argues that even if the court properly assessed the jury fees initially, the assessment was vacated when the court allowed him to withdraw his guilty plea. He contends that the court could not resurrect the assessment after the second judgment of conviction was entered without the assessment. Instead, the court issued a subsequent order resurrecting the assessment.

¶11 We disagree with Sislo's contention that the fee assessment was vacated when the first judgment of conviction was vacated. As the circuit court stated:

The order for payment of jury fees is independent and separate from the Judgment of Conviction. Therefore, the modification or vacation of the Judgment of Conviction did not have any affect on the order for payment of jury fees. So there is no need to reinstate the order for payment of jury fees. That order was never vacated. That order still stands. The defendant is required to pay the jury fees.

We agree with the circuit court's determination. The fact that the court issued a second order assessing the jury fees only served to reaffirm that Sislo remained responsible for the jury fee. It is not, as Sislo argues, proof that the original order was vacated along with the judgment.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

