

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 05, 2006

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. 2005AP2094

Cir. Ct. No. 2005CV4163

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. ROBERT BARNES,

PETITIONER-APPELLANT,

V.

**E. MICHAEL MCCANN, DISTRICT ATTORNEY,
AND MILWAUKEE COUNTY,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
M. JOSEPH DONALD, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. In 2003, Robert Barnes was charged with possession with intent to deliver more than one hundred grams of cocaine. He entered a guilty plea, was convicted and sentenced to twelve years of

imprisonment, consisting of six years of initial confinement and six years of extended supervision.

¶2 In 2005, Barnes filed a petition for writ of *mandamus*, seeking an order to compel the Milwaukee County District Attorney's Office to provide him with copies of certain documents related to the conviction:

- 1) Certified copy(s) of all search warrants.
- 2) Certified copy(s) of the Milwaukee Police Department P.O. – 15 and supplemental incident report on November 13, 2002.
- 3) Certified copy(s) of all witnesses including Detective Jeffrey Doss and Police informant Edwin Negron on or about the week of October 27, 2002.
- 4) Certified copy(s) of the search warrant for 2002.
- 5) Certified copy(s) of the Preliminary Exhibit list which is part of the Discovery and Inventory that was identified and received no case #02CF6537.
- 6) Certified copy(s) of the P.S.I. report on case #02CF6537.
- 7) Certified copy(s) of all work results.
- 8) Certified copy(s) of Pre-trial incarceration form.
- 9) The full discovery that I tried to get from my Lawyer which he never filed a motion for discovery.

An assistant district attorney responded to the petition, informed Barnes that the Milwaukee County District Attorney's Office did not have the documents he sought and explained where he might obtain the documents.

¶3 Subsequently, the circuit court entered a written order denying Barnes's petition. The circuit court's order concluded that Barnes failed to

demonstrate a clear legal right to the documents. The circuit court also concluded that Barnes failed to establish that the district attorney's office was the custodian of the documents he sought or that it had a positive and plain duty to disclose those records to him. Barnes appeals.

¶4 A writ of *mandamus* is a discretionary remedy. However, "it is an abuse of discretion to refuse to issue the writ when the noted prerequisites are present: (1) a clear legal right; (2) a positive and plain duty; (3) substantial damage; and (4) no other adequate remedy at law." *Law Enforcement Standards Bd. v. Village of Lyndon Station*, 101 Wis.2d 472, 493-94, 305 N.W.2d 89 (1981).

¶5 The record is undisputed that Barnes failed to meet the prerequisites set by the Wisconsin Supreme Court for a writ of *mandamus*. Barnes did not demonstrate that the district attorney's office was the custodian of the documents nor that the district attorney's office owed Barnes a positive and plain duty to disclose these documents to him. As the record demonstrates, the district attorney's office explained to Barnes the documents he requested were maintained at the arresting agency and not with the Milwaukee District Attorney's Office. Furthermore, Barnes had a number of additional remedies available to him including obtaining the documents from the clerk of courts, pursuing the police reports under the Freedom of Information Act and Open Records Act or seeking a copy of the contents of his file from his trial counsel.

¶6 Because Barnes failed to establish the prerequisites to a writ of *mandamus*, this court need not determine whether the circuit court ruled correctly when it held that the evidence he sought was not critical, relevant and material as contemplated by *State v. O'Brien*, 223 Wis. 2d 303, 320, 588 N.W.2d 8 (1999).

Cf. State v. Blalock, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“cases should be decided on the narrowest possible ground”).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

