

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 23, 2007

A. John Voelker
Acting 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. 2006AP1983

Cir. Ct. No. 2006TR415

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

COUNTY OF PIERCE,

PLAINTIFF-RESPONDENT,

V.

GEOFFREY M. BENGTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Pierce County: ROBERT W. WING, Judge. *Reversed and cause remanded for further proceedings.*

¶1 CANE, C.J.¹ Geoffrey Bengtson appeals a judgment of conviction and an order denying his motion to reopen. Bengtson contends the trial court erroneously exercised its discretion by not granting his motion to reopen. We agree and therefore reverse.²

¶2 On April 11, 2006, Bengtson received a citation for operating a motor vehicle while his driving privileges were suspended. The citation required an appearance on June 5, 2006, either in person or by letter to the judge as set forth in WIS. STAT. § 345.34(3). Bengtson, however, sent a not guilty plea by letter to the district attorney's office but did not send a copy of the letter to the judge. The district attorney's office received Bengtson's plea on June 2, 2006. On June 7, 2006, Bengtson was found guilty based on his failure to appear. Bengtson then filed a motion to reopen, which the court denied.

¶3 We review a motion to reopen under the erroneous exercise of discretion standard. See *Kovalic v. DEC Int'l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). "We will not reverse a discretionary determination by the trial court if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision." *Prahl v. Brosamle*, 142 Wis. 2d 658, 667, 420 N.W.2d 372 (Ct. App. 1987).

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.

² Bengtson makes numerous other arguments which are underdeveloped and unsupported by citation to authority. This court declines to consider arguments that are unexplained, underdeveloped, or unsupported by citation to authority. *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). We therefore decline to address Bengtson's additional arguments.

¶4 WISCONSIN STAT. § 806.07(1)(a) allows the trial court to reopen a judgment for “[m]istake, inadvertence, surprise, or excusable neglect.” While Bengtson may have incorrectly filed his not guilty plea, he did send the plea to the district attorney’s office prior to the date of his initial appearance.³ Bengtson’s failure to send a copy to the judge was a mistake. The only evidence on the record that the trial court reviewed Bengtson’s motion to reopen is a handwritten note on the top of the motion reading “no defenses stated.” However, Bengtson’s motion reads, “I had mailed in a not guilty plea received June 2, 2006 and assumed it had been docketed into the court system.” Bengtson also filed a copy of the letter sent to the district attorney’s office with a stamp indicating the office had received the letter on June 2. We see no reasonable basis for the trial court’s denial of Bengtson’s motion. Therefore, we reverse the order denying Bengtson’s motion to reopen. On remand, the trial court shall reopen Bengtson’s judgment of conviction. Additionally, we note the record shows Bengtson timely paid his jury fee and therefore is entitled to a jury trial on remand. *See* WIS. STAT. § 800.04(1)(d).

By the Court.—Judgment and order reversed and cause remanded for further proceedings.

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

³ The record contains a copy of the not guilty plea letter stamped received by the district attorney’s office on June 2, 2006. The County does not deny the letter was received prior to the initial appearance date.

