

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 22, 2008

David R. Schanker
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. 2007AP1452-CR

Cir. Ct. No. 2002CT28

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

SHAWN D. BOWMAN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Barron County:
EDWARD R. BRUNNER, Judge. *Reversed and cause remanded with directions.*

¶1 BRIDGE, J.¹ The State appeals from the circuit court's order vacating Shawn D. Bowman's judgment of conviction for operating while intoxicated in violation of WIS. STAT. § 346.63(1)(a) (second offense) and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

dismissing the charge against him. The State argues that the circuit court lacked authority to sua sponte do so. We agree, reverse the order, and remand the cause with directions to reinstate the conviction.

BACKGROUND

¶2 On January 21, 2002, Bowman was arrested for operating a vehicle while intoxicated. A blood draw revealed that Bowman's blood ethanol concentration to be .204 g/100 mL, more than twice the legal limit of .10 g/100 mL at the time. On March 25, 2002, Bowman plead guilty to operating while intoxicated in violation of WIS. STAT. § 346.63(1)(a) (second offense). The circuit court sentenced Bowman to serve twenty days in jail, revoked his license privileges for sixteen months, imposed a fine, and ordered an alcohol assessment. Bowman did not seek postconviction relief. He served his sentence and the case was closed.

¶3 Over five years later, on May 25, 2007, Bowman sent a letter to the circuit court seeking to expunge his conviction or have the charge "changed into another offense so that I may return to work so I may support my wife and children." Bowman stated that he was a Merchant Marine and worked on a cargo ship in the Great Lakes. He explained that "[r]ecently, Canadian Customs is forbidding persons with any felony or criminal charges (within the past 10 years) into the country."

¶4 The circuit court sent a letter to the district attorney suggesting that the district attorney reopen the case, find that Bowman refused the field sobriety test, and vacate the conviction. The district attorney declined to reopen the case. On June 19, 2007 the circuit court entered an order vacating Bowman's conviction and dismissing the charge. The order states that "[t]he Court finds that it is in the

interest of justice, based on information received from the defendant, to vacate and dismiss the charge.” The State appeals.²

DISCUSSION

¶5 An examination of the judicial authority of a circuit court presents a question of law that is reviewed de novo. *Breier v. E.C.*, 130 Wis. 2d 376, 381, 387 N.W.2d 72 (1986).

¶6 We consider three possible sources which might provide a basis for the circuit court’s authority to vacate and dismiss an operating while intoxicated conviction: (1) statutory authority, (2) inherent judicial authority, and (3) equitable judicial authority. *See id.* at 381.

¶7 The circuit court did not cite to statutory authority in its order, and we are unaware of any statute authorizing a court to sua sponte vacate and dismiss an OWI conviction. The State points out that under WIS. STAT. § 973.015(1), a circuit court may expunge certain misdemeanor convictions; however, the statute applies only “[w]hen a person is under the age of 21 at the time of the commission of an offense....” Bowman was 27 at the time of the offense.

¶8 The State also contends that the statutory framework for dismissing an OWI charge contemplates that it occur by application of the district attorney to

² Although Bowman has not filed a brief with this court, he has provided a letter which reiterates that his conviction continues to interfere with his ability to obtain work as Merchant Marine in Canada. We conclude that this is not an appropriate case for summary reversal as a sanction for failure to file a brief. *See State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 259-60, 500 N.W.2d 339 (Ct. App. 1993).

the circuit court. We agree. WISCONSIN STAT. § 967.055(2)(a) provides in relevant part:

Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63(1) or (5) ... the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant

See also State v. Dums, 149 Wis. 2d 314, 322, 440 N.W.2d 814 (Ct. App. 1989) (upholding circuit court's shared power to review and supervise a prosecutor's discretion to dismiss or amend charges). We conclude that the circuit court was without statutory authority to vacate the conviction and dismiss the charge against Bowman.

¶9 We next consider the circuit court's inherent authority to do so. The doctrine of inherent power derives from this state's separation of governmental power between three branches of government. *Breier*, 130 Wis. 2d at 385. Generally, courts have exercised inherent authority in three areas. First, courts have authority over the internal operations of the court. *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 749, 595 N.W.2d 635 (1999). Second, courts have authority to regulate members of the bench and bar. *Id.* Third, the court may exercise inherent authority to ensure that the court functions efficiently and effectively to provide the fair administration of justice. *Id.* at 749-50. Thus, the court may not exercise inherent authority over matters that concern neither the existence of the court nor the orderly and efficient functioning of the court. *See id.* at 751. The circuit court's order in the present case was not made pursuant to any of these three traditional areas of inherent power.

¶10 The final possible source which might provide a basis for the circuit court's actions is equitable authority. Equitable authority is a variant of the inherent authority doctrine. Under its equitable authority, a circuit court may grant equitable remedies to litigants even in the absence of explicit statutory authority when the available legal remedy is inadequate to do complete justice. *Breier*, 130 Wis. 2d at 388. However, the relief that a court grants must be in response to the invasion of legally protected rights. *Id.* at 389. Bowman did not assert a violation of a legally protected right, and we conclude that the circuit court did not have the authority to grant equitable relief under the facts of this case.

¶11 Based on the foregoing, the circuit court order is reversed and the cause is remanded with directions to reinstate the original conviction.

By the Court.—Order reversed and cause remanded with directions.

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

