

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 10, 2010

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. 2009AP2994

Cir. Ct. No. 2000CM2163

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

MELODY P. M.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
JULIE GENOVESE, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ The State appeals an order of the circuit court expunging Melody P.M.'s civil conviction for retail theft in violation of DANE COUNTY ORDINANCE § 32.03 (June 2003). The State contends that the court did

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

not have authority to expunge the civil conviction. We disagree and therefore affirm.

BACKGROUND

¶2 In 2000, Melody P.M. was charged with retail theft in violation of WIS. STAT. § 943.50(1m) (1999-2000). The charge stemmed from an incident in which Melody P.M. took from a merchant an item valued at \$4.39 without paying for it. Melody P.M. was seventeen years old at the time. Pursuant to a plea agreement, Melody P.M. pled no contest to DANE COUNTY ORDINANCE § 32.03, which adopts § 943.50. The penalty for violating § 32.03 is limited to a civil forfeiture. *See* DANE COUNTY ORDINANCE § 32.09 (June 2003).

¶3 On July 28, 2009, Melody P.M. requested that the circuit court expunge her civil conviction pursuant to WIS. STAT. § 973.015. The State contested Melody P.M.'s request, arguing the conviction could not be expunged under § 973.015 because the penalty for violation of DANE COUNTY ORDINANCE § 32.03 was only a forfeiture. The circuit court, however, expressed concern that under the State's theory, it would have authority to expunge a misdemeanor conviction but not a less severe civil conviction penalized only by forfeiture. The result being that Melody P.M. would still have an offense on record merely because she entered a plea to § 32.03 and not the original misdemeanor charge. Based on this concern and notwithstanding its observation of a likely appeal, the court ordered Melody P.M.'s conviction expunged. The State appeals.²

² “We may, at our discretion, summarily reverse if the respondent fails to brief an appeal if we determine that he or she has abandoned the appeal or has acted egregiously or in bad faith.” *Daniels v. Wisconsin Chiropractic Examining Bd.*, 2008 WI App 59, ¶ 3 n.3, 309 Wis. 2d 485, 750 N.W.2d 951. We choose not to do so in this case.

DISCUSSION

¶4 The State contends that the circuit court erred in expunging Melody P.M.’s civil forfeiture conviction because expungement of a civil forfeiture is not authorized under WIS. STAT. § 973.015 since the conduct punishable by the civil forfeiture is not a crime. The State relies upon *State v. Michaels*, 142 Wis. 2d 172, 417 N.W.2d 415 (Ct. App. 1987), wherein the court held that expungement of a civil forfeiture is not permitted under § 973.015. See *Michaels*, 142 Wis. 2d at 177.

¶5 In *Michaels*, the defendant sought the expungement of a conviction which was penalized only by a forfeiture. The *Michaels* court held, however, that WIS. STAT. § 973.015 “applies only to misdemeanors, not forfeitures.” *Id.* When *Michaels* was decided, WIS. STAT. § 973.015 provided as follows:

973.015 Misdemeanors, special disposition. (1)

When a person under the age of 21 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum penalty is imprisonment for one year or less in the county jail, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.

See *id.* at 176. In determining that § 973.015 is not applicable to offenses punishable only by forfeiture, the court in *Michaels* focused on the title of the statute, which it observed “can be persuasive of the statute’s interpretation.” *Id.* at 177. The court found the usage of the word “Misdemeanor” to be a clear indication that non-criminal actions are not eligible for expungement under § 973.015. The court explained, “[a] misdemeanor is any *crime* other than one punishable by imprisonment in the state prisons, whereas ‘[c]onduct punishable

only by a forfeiture is not a crime.”” *Id.* (citations omitted). Thus, according to the court in *Michaels*, non-criminal offenses are not eligible for expungement under § 973.015.

¶6 Effective June 30, 2009, *see* 2009 Wis. Act 28, WIS. STAT. § 973.015 was amended to provide as follows:

973.015 Special disposition. (1)(a) Subject to par. (b) and except as provided in par. (c), when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition....

2009 Wis. Act 28, §§ 3384-3385.

¶7 The June 30, 2009 amendment to WIS. STAT. § 973.015, in addition to enlarging the maximum period of imprisonment a violation may have in order to be eligible for expungement, eliminated the term “Misdemeanors” from the name of the statute. Absent that term, there is nothing in the plain language of § 973.015 limiting its application to only misdemeanor offenses. *See State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (“statutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.’”). We therefore conclude that following the effective date of the amendment to the statute, § 973.015 applies not only to misdemeanors, but also to forfeitures.

¶8 Melody P.M. requested the expungement of her civil conviction on July 30, 2009, approximately thirty days after the effective date of the amendment to WIS. STAT. § 973.015. Because on that date § 973.015 applied to misdemeanors

as well as forfeitures, the circuit court was permitted to expunge Melody P.M.'s conviction. We therefore affirm the order of the court expunging Melody P.M.'s 2000 conviction for violation of DANE COUNTY ORDINANCE § 32.03.

By the Court.—Order affirmed.

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

