



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

August 20, 2013

To:

Hon. Timothy M. Doyle
Circuit Court Judge
Barron County Justice Center
1420 State Hwy 25 North #2602
Barron, WI 54812-3009

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
1420 State Hwy 25 North, Room 2201
Barron, WI 54812-3004

Angela L. Beranek
District Attorney
Barron County Justice Ctr #2301
1420 State Hwy 25 N
Barron, WI 54812-1583

Kathryn A. Keppel
Gimbel, Reilly, Guerin & Brown LLC
330 E. Kilbourn Ave., Ste. 1170
Milwaukee, WI 53202

Jason D. Luczak
Gimbel, Reilly, Guerin & Brown
Two Plaza East, Ste. 1170
330 E. Kilbourn Ave.
Milwaukee, WI 53202

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

2013AP666-CR

State of Wisconsin v. Jeremy L. Jerome (L. C. #1996CM301)

Before Hoover, P.J.¹

Jeremy Jerome appeals an order denying his motion for expunction. Jerome argues the 2009 amendment to the adult expunction law should be applied retroactively, and, after applying the statute retroactively, we should conclude that expunction of his 1996 conviction is

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

appropriate. Based upon our review of the briefs and record, we conclude this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21.

In 1996, Jerome was convicted of disorderly conduct. Jerome was twenty-two years old at the time of the commission of the crime. Therefore, pursuant to the pre-2009 version of the expunction statute, he was too old to be eligible for expunction. *See, e.g.*, WIS. STAT. § 973.015(1)(a) (2007-08).² However, in 2009, our legislature amended the statute and expanded the age eligibility for expunction to age twenty-five. *See* WIS. STAT. § 973.015(1)(a) (2009-10).³

In 2013, Jerome moved for expunction of the 1996 conviction. He asked the circuit court to apply the current version of the expunction statute retroactively, and then determine that he

² WISCONSIN STAT. § 973.015(1)(a) (2007-08), provides, in relevant part:

[W]hen a person is 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.

³ WISCONSIN STAT. § 973.015(1)(a) (2009-10), provides, in relevant part:

[W]hen 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.

met the other discretionary criteria for expunction. The circuit court denied Jerome's motion based on *State v. Meinhardt*, 2012 WI App 82, 343 Wis. 2d 588, 819 N.W.2d 347.

In *Meinhardt*, we considered whether the amended, 2009 version of the expunction statute, WIS. STAT. § 973.015(1)(a), could be applied retroactively. We first noted that, when determining whether a statute could be applied retroactively, we were bound by the legislature's express intent. *Id.*, ¶3. Only if the legislature's intent was unclear would we continue the analysis to determine whether the statute could be applied retroactively. *Id.*, ¶4.

We concluded the legislature expressly intended to have courts apply the amended expunction statute prospectively rather than retroactively. *Id.*, ¶¶1, 5 (citing 2009 Wis. Act 28, §§ 9309 and 9400). We emphasized that the Act that amended the statute stated, “[t]he treatment of section 973.015(1)(a) and (c) of the statutes first applies to *sentencing orders that occur on the effective date of this subsection.*” *Id.*, ¶5 (quoting 2009 Wis. Act 28, § 9309). We then noted that 2009 Wis. Act 28, § 9400 gave § 9309 an effective date of July 1, 2009. *Id.* We held that “under the amended § 973.015(1)(a), a defendant must be under twenty-five at the commission of his offense *and* be sentenced on or after July 1, 2009, as well as meeting the additional criteria in the statute, to qualify for expungement.” *Id.*

On appeal, Jerome recognizes we are bound by our decision in *Meinhardt*. See *Cook v. Cook*, 208 Wis. 2d 166, 185-89, 560 N.W.2d 246 (1997). However, Jerome argues *Meinhardt* was wrongly decided because the legislature's intent as to the amended statute's applicability is unclear. Jerome agrees that the amended statute applies to sentencing orders that occur on or after July 1, 2009. However, he contends there is an ambiguity as to what constitutes “sentencing orders.” See 2009 Wis. Act 28, § 9309. Jerome argues that this ambiguity renders

the legislature's intent unclear and, as a result, the *Meinhardt* court should have engaged in further analysis to determine whether the statute could be applied retroactively. He asserts that, had the court engaged in further analysis, it would have concluded the amended expunction statute should be applied retroactively. Accordingly, Jerome asks us to either: (1) certify this case to the supreme court or (2) adhere to *Meinhardt*, but conclude the case was wrongly decided. See *Cook*, 208 Wis. 2d at 189-90.

We perceive no reason to certify this case or opine that *Meinhardt* was wrongly decided. We conclude WIS. STAT. § 973.015(1)(a) may not be applied retroactively and Jerome is not eligible for expunction. See *Meinhardt*, 343 Wis. 2d 588, ¶5.

Therefore,

IT IS ORDERED that the court's order is summarily affirmed. See WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals