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DISTRICT I

September 26, 2013

To:

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

2012AP1128-CR

State of Wisconsin v. Andre Derrick Wingo (L.C. #2012CF968)

Before Curley, P.J., Kessler and Brennan, JJ.

Andre Derrick Wingo, *pro se*, appeals from a judgment of conviction on one count of failure to register as a sex offender. He contends the circuit court erred when it failed to grant his

motion to dismiss the complaint.¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. The judgment is summarily affirmed.

A criminal complaint and arrest warrant were issued for Wingo on March 2, 2012. He was apprehended about a month later, and had an initial appearance on April 2, 2012. Cash bond was set at \$750. On April 17, 2012, Wingo sought dismissal of the criminal complaint against him on the grounds that the preliminary hearing had not been timely held by April 12, 2012. The court commissioner denied the motion on May 10, 2012. On May 14, 2012, Wingo pled no contest to the charge and was sentenced to forty-four days' time served.

On appeal, Wingo first reasserts his claim that the preliminary examination was not timely held. A "preliminary examination shall be commenced within 20 days after the initial appearance of the defendant if the defendant has been released from custody or *within 10 days if the defendant is in custody and bail has been fixed in excess of \$500.*" WIS. STAT. § 970.03(2) (emphasis added). The latter is the situation in this case.

¹ The motion to dismiss was denied by Court Commissioner Barry Slagle on May 10, 2012. The Honorable David Borowski later accepted Wingo's no-contest plea and imposed sentence.

The notice of appeal in this case was filed on May 10, 2012, though the judgment of conviction was not entered until May 17, 2012. Wingo's appeal of the non-final denial of the motion to dismiss is thus before us by operation of WIS. STAT. § 808.04(8) (2011-12) (if judgment or order appealed from was entered after notice of appeal was filed, notice shall be treated as filed after entry and on day of entry) and WIS. STAT. RULE 809.10(4) (2011-12) (appeal from final judgment brings before appellate court all prior nonfinal orders).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Wingo's initial appearance was held on April 2, 2012, and it is true that the preliminary examination was not completed by April 12, 2012. However, the docket entries indicate² that during the initial appearance, the preliminary hearing was scheduled for April 10, 2012. At that hearing, the preliminary examination was adjourned for cause to allow the circuit court to conduct an indigency hearing, which was held on April 17, 2012. At the end of the April 17 hearing, the preliminary hearing was scheduled to resume on April 26, 2012, which it did. The hearing was further continued out to May 10, 2012, when it concluded.

“On stipulation of the parties or on motion and for cause, the court may extend” the required timelines for holding a preliminary hearing. *Id.* The limited record before us indicates that is precisely what happened. Therefore, the court commissioner did not err in denying the motion to dismiss because a preliminary examination was, in fact, timely *commenced*.

Wingo also complains on appeal that the circuit court should have dismissed his case because he believes that the information was incorrectly filed, as evidenced by the file stamp of the “children’s division.” Wingo does not indicate where this issue was raised before the circuit court. Issues not presented to the circuit court ordinarily will not be considered by this court for the first time on appeal. See *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997).

In any event, WIS. STAT. § 971.01(2) requires only that the information “shall be filed *with the clerk* within 30 days after the completion of the preliminary examination.” (Emphasis added.) The information was filed on May 14, 2012, four days after the conclusion of the

² Wingo has not secured any transcripts for this appeal. We therefore assume that any information that would have been in those transcripts supports the court commissioner's and circuit court's decisions. See *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

preliminary examination. Though the file stamp indicates that the information was accepted in the children's division rather than the criminal division, Wingo fails to establish how this constitutes error. "Clerk" simply means the "clerk of circuit court of the county including the clerk's deputies." WIS. STAT. § 967.02(1). The meaning does not change based on administratively created divisions in larger counties. The record conclusively shows that the information was filed in Milwaukee County Circuit Court with John Barrett—the clerk of that circuit court. For purposes of WIS. STAT. § 971.01(2), the filing division is irrelevant.

IT IS ORDERED that the judgment of conviction is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals