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DISTRICT II

October 16, 2019

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

2018AP2145-CR State of Wisconsin v. Marvin L. Adams (L.C. #2017CF526)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Marvin L. Adams seeks dismissal of a criminal complaint *with* prejudice for noncompliance with WIS. STAT. § 971.11 (2017-18),¹ the Intrastate Detainer Act. Based upon

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

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. As the circuit court's dismissal *without* prejudice was an appropriate exercise of discretion under *State v. Davis*, 2001 WI 136, 248 Wis. 2d 986, 637 N.W.2d 62, we affirm the order of the circuit court.

Wisconsin's Intrastate Detainer Act grants an inmate of a state prison the statutory right to receive prompt disposition of any untried criminal case pending against the inmate. WIS. STAT. § 971.11(1). The State, upon receipt of a request under the Act, must bring any untried felony within 120 days and any untried misdemeanor within ninety days. Sec. 971.11(2), (3). If the State fails to comply with the time deadlines, the "case shall be dismissed." Sec. 971.11(7). The Act is silent as to whether the dismissal is to be with or without prejudice. *Davis*, 248 Wis. 2d 986, ¶12. In *Davis*, our supreme court concluded that a circuit court is to exercise its discretion in deciding whether dismissal should be with or without prejudice. *Id.*, ¶5. A circuit court erroneously exercises its discretion when the exercise of discretion is based on an error of law or where a circuit court does not consider the facts of record under the relevant law or does not reason its way to a rational conclusion. *Id.*, ¶28.

In September 2017, Adams was charged in a six-count complaint with attempting to flee or elude a traffic officer, two counts of felony bail jumping, two counts of misdemeanor bail jumping, and obstructing an officer, all as a repeater. Adams, then pro se, properly requested a prompt disposition under WIS. STAT. § 971.11, and it is undisputed that the State failed to bring

his case on for trial within the 120-day time period.² Adams requested dismissal with prejudice, and the State requested dismissal without prejudice. *Davis* holds that a circuit court properly exercises its discretion if it considers the following factors when determining whether dismissal should be with or without prejudice:

[T]he reasons for and the length of the delay in bringing the criminal case on for trial; whether the nature of the case makes it unreasonable to expect adequate preparation within the statutory time period; an accused's conduct contributing to the delay; an accused's waiver of the statutory right to prompt disposition; the harm to an accused resulting from the delay, such as anxiety and concern; the effect of the delay on an accused's legal defenses; the effect of the delay on the programs and movement within the institutions available to an accused; the effect of the delay on the orderly rehabilitation process of an accused within the Department of Corrections; the effect of the delay on an accused's concurrent sentencing possibilities; the effect of the delay on an accused's possible transfer to a less secure facility; the effect of the delay on an accused's opportunity for parole; the effect of the delay on the transfer of the accused to another institution; the effect of the delay and dismissal on the public interest in the prompt prosecution of crime; and the effect of the delay and dismissal on the victim.

Davis, 248 Wis. 2d 986, ¶29 (citation omitted). The circuit court is to balance these and “other factors” in exercising its discretion to dismiss with or without prejudice. *Id.*

The record conclusively reflects that the circuit court applied and considered the *Davis* factors as well as the arguments of the parties. Adams acknowledges that the court applied the *Davis* factors, but he argues that as there was “no good cause” for the State’s failure to act within the timeline, the court had no option but to dismiss with prejudice. We disagree. The court’s reference in *Davis* to “good cause” and “no good cause” reflect the outcome from assessing and applying the *Davis* factors. *See id.*, ¶17. The *Davis* factors examine not only the State’s

² We assume that Adams was in prison at the time he filed his request for prompt disposition pursuant to WIS. STAT. § 971.11 as he claimed that he was “incarcerated in another matter” on January 9, 2018, and neither of the parties argue that § 971.11 is not applicable to Adams.

actions/inactions but also examines the acts of the defendant, the effects of the violation upon the defendant, as well as the rights of the public and victim(s). *Id.*, ¶29. The court, as Adams admits, weighed those interests/factors in deciding that dismissal in this case should be without prejudice.

At the motion hearing, the State argued that the length of the violation was brief; that this was the first time Adams had appeared in court on this matter (Adams did not appear for his initial appearance, resulting in a bench warrant³); that he did not yet have legal counsel; that he contributed to the delay by having open warrants in other counties; and that he suffered no harm by the short delay. Adams argued that his probation was revoked because of the underlying charges, and, as a result, he was held in medium security status and was “denied my minimum work release custody for this offense.”

The court addressed the *Davis* factors and found that the additional delay “were matters of a few months” and that any effect upon his legal defense was “relatively limited” due to the nature of the offense and the fact that he did not have an attorney representing him. The court acknowledged that rehabilitation and movement within the Department of Corrections were affected by the criminal charges before the court, but it concluded those factors were countered by the nature of the case against Adams (eluding) which created a potential of harm to others—a

³ It appears from the record that Adams was in custody in the Outagamie County Jail at the time of the initial appearance. After Adams allegedly fled from a Fond du Lac County Sheriff’s Deputy in June 2017, further investigation led the deputy to Adams. Adams’ probation agent was unable to locate Adams and indicated that Adams had “been an absconder and has not contacted her since April 2017.” She placed a probation warrant out for Adams. Adams was eventually taken into custody, presumably on the probation warrant, and held in the Outagamie County Jail. Adams argues that he “missed his initial appearance by no fault of his own but rather due to a failure by corrections staff to transport him.” Under the circumstances, we conclude that Adams’ failure to appear at his initial appearance was an appropriate consideration of the court.

factor which “weighs considerably on the Court.” The court concluded that “justice most calls for having a dismissal without prejudice.”

The record amply supports the court’s exercise of discretion. Adams’ preeminent argument is that the underlying charges resulted in the revocation of his probation. Adams’ probation revocation, however, is both independent and collateral to the charges against Adams in this case.

The court appropriately applied the *Davis* factors to the facts before the court and reached a rational conclusion in dismissing the criminal case without prejudice.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals