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DISTRICT II

September 8, 2021

To:

Hon. Peter L. Grimm
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County
Electronic Notice

Kathleen A. Lindgren
Electronic Notice

Anne Christenson Murphy
Assistant Attorney General
Electronic Notice

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

2020AP325-CR

State of Wisconsin v. Xavier W. Young (L.C. #2016CF118)

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

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).

Xavier W. Young appeals from a judgment convicting him as party to the crime of armed robbery and burglary. On appeal, Young argues that the circuit court misused its discretion when it declined to dismiss these criminal proceedings in light of a dismissal without prejudice of the same charges in a 2014 criminal case.¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See*

¹ The circuit court dismissed the 2014 case, *State v. Young*, Fond du Lac circuit court case No. 2014CF465, without prejudice because the State did not act in response to Young's request for prompt disposition under WIS. STAT. § 971.11 (2019-20) (prompt disposition of intrastate detainees).

WIS. STAT. RULE 809.21 (2019-20).² We conclude that we do not have jurisdiction to address the 2014 criminal case, and the circuit court did not erroneously exercise its discretion when it denied Young’s motion to dismiss the case before us (the 2016 case). We affirm.

“The principles of finality apply in criminal cases.” *State v. Wolfe*, 2019 WI App 32, ¶6, 388 Wis. 2d 45, 931 N.W.2d 298 (citations omitted). “We have jurisdiction to review final orders and judgments.” *Id.* (citations omitted). In *Tyler v. RiverBank*, 2007 WI 33, ¶17, 299 Wis. 2d 751, 728 N.W.2d 686, the court addressed finality and stated that “[a] court disposes of the entire matter in litigation in one of two ways: (1) by explicitly dismissing the entire matter in litigation as to one or more parties or (2) by explicitly adjudging the entire matter in litigation as to one or more parties.” The dismissal of the 2014 case without prejudice adjudged the case and disposed of the entire matter in litigation between the parties. Assuming without deciding that Young could have appealed from the 2014 dismissal order, he did not, and the time for doing so has long since expired. WIS. STAT. RULE 809.30(2)(h). For purposes of the appeal before us, the 2014 dismissal without prejudice stands and is not subject to further review.

We turn to Young’s challenge to the circuit court’s refusal to dismiss the 2016 case. As grounds for dismissing the 2016 case, Young cited the same factors that led the circuit court to dismiss the 2014 case. The record does not show that Young made a WIS. STAT. § 971.11 prompt disposition request in the 2016 case. The circuit court declined to dismiss because the 2014 case was dismissed without prejudice, and the State had the discretion to refile the charges. A jury convicted Young.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

We review the basis for the circuit court’s refusal to dismiss the 2016 case: the State had the discretion to refile the charges dismissed without prejudice in 2014. The law supports the circuit court’s decision. A WIS. STAT. § 971.11 dismissal “can be without prejudice and therefore allow[s] for refiling.” *State v. Butler*, 2014 WI App 4, ¶7, 352 Wis. 2d 484, 844 N.W.2d 392; see *State v. Davis*, 2001 WI 136, ¶19, 248 Wis. 2d 986, 637 N.W.2d 62 (when charges are dismissed without prejudice under WIS. STAT. § 971.11, the State may refile those charges). Young concedes in his reply brief that this is the law.

We conclude that the circuit court did not misuse its discretion when it denied Young’s motion to dismiss the 2016 case. *Davis*, 248 Wis. 2d 986, ¶28 (whether to dismiss a criminal case is within the circuit court’s discretion).

Upon the foregoing reasons,

IT IS ORDERED that the judgment 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