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DISTRICT IV

August 11, 2022

To:

Hon. Guy D. Dutcher
Circuit Court Judge
Electronic Notice

John W. Kellis
Electronic Notice

Katrina Rasmussen
Clerk of Circuit Court
Waushara County Courthouse
Electronic Notice

Matthew Gregory Meehan
2636 N. Pierce St., Apt. 6
Milwaukee, WI 53212

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

2021AP1884-CR State of Wisconsin v. Matthew Gregory Meehan
(L.C. # 2021CF50)

Before Blanchard, P.J, Kloppenburg, and Fitzpatrick, 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).

The State appeals a circuit court order granting Matthew Meehan's motion to suppress evidence in his criminal case. Meehan has failed to file a respondent's brief and has also failed to respond to this court's orders warning Meehan that failure to file the brief may result in summary reversal. We conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).¹ Based on Meehan's failure to file a respondent's brief, we summarily reverse the order granting the motion to suppress. *See* WIS. STAT. RULE 809.83(2).

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

On September 28, 2021, the circuit court granted Meehan's motion to suppress evidence. The State appealed.

The State filed its appellant's brief on February 15, 2022. We issued a delinquency notice on April 7, 2022, cautioning Meehan that the respondent's brief had not been filed as required. We issued an order on April 27, 2022, informing Meehan that we had still not received the respondent's brief as required and as directed by the court's delinquency notice. The order further cautioned Meehan that the "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (quoted source omitted), and "allows this court to assume that the respondent concedes the issues raised by the appellant." *See Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). We stated that "summary reversal is therefore a potential sanction for a respondent's failure to file a brief." *See Blackdeer*, 176 Wis. 2d at 259-60.

By order dated June 20, 2022, we determined upon our initial review of the appellant's brief and the record that a respondent's brief was necessary for the resolution of this appeal on its merits. We stated that summary reversal may therefore be an appropriate sanction for Meehan's failure to file a brief. *See* WIS. STAT. RULE 809.83(2). We noted, however, that before we summarily reverse based on Meehan's violation of briefing requirements, we must determine that Meehan has abandoned the appeal or has acted egregiously or in bad faith. *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647. Related to that inquiry, we questioned whether Meehan is entitled to appointed counsel in this appeal. We noted that Meehan was represented by court-appointed counsel at the circuit court level but that he is not represented by counsel in this appeal.

Accordingly, we directed Meehan to inform this court by July 20, 2022, whether he is seeking appointed counsel for this appeal. We informed Meehan that, if he did not wish to pursue appointed counsel, he would be required to file a pro se respondent's brief by that date. We stated that, if Meehan failed to timely inform this court that he wishes to pursue the appointment of counsel and also failed to timely file a pro se respondent's brief, this court would conclude that Meehan has abandoned the appeal and would summarily reverse the order that is the subject of the appeal. We placed this appeal on hold while we awaited Meehan's response. We have not received any further correspondence from Meehan.

Under WIS. STAT. RULE 809.83(2), failure to comply with the rules of appellate procedure is grounds for summary reversal in the discretion of this court. Failure of the respondent to file a brief is a violation of WIS. STAT. RULE 809.19(3), which provides: "The respondent shall file a brief" This court may summarily reverse upon a finding that the respondent has abandoned the appeal. *See Raz*, 260 Wis. 2d 614, ¶36. Meehan was provided repeated notice that he is required to file a respondent's brief, and he was repeatedly warned that failure to file the respondent's brief would result in summary reversal. Meehan has failed to file the respondent's brief, has made no request to extend the time to file the respondent's brief, and has otherwise failed to communicate with this court regarding this appeal despite this court's orders. This court can only conclude that Meehan has abandoned this appeal. Accordingly, the order of the circuit court granting the motion to suppress is summarily reversed.

Therefore,

IT IS ORDERED that the hold in this appeal is lifted.

IT IS FURTHER ORDERED that the order is summarily reversed 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