COURT OF APPEALS
DECISION
DATED AND FILED

March 5, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2212 **Cir. Ct. No. 1994CF544**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL T. STORM P/K/A DANIEL T. SLAUGHTER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Racine County: ALLAN B. TORHORST, Judge. *Affirmed.*

¶1 BROWN, C.J.[1] Daniel T. Storm, p/k/a Daniel T. Slaughter, appeals an order denying his motion to vacate the fine portion of his sentence. He

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-2012). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

contends that there has never been an assessment of his ability to pay the fine as ordered by this court in a previous opinion and, as such, the State has waived its right to have that hearing now, by virtue of extreme delay. He contends, in the alternative, that the circuit court must first conduct an "ability to pay" hearing before there can be enforcement of the fine. He also argues that, to the extent that the record shows a stipulated payment plan, he was never a party to it and never authorized an attorney to so stipulate. But the circuit court found that it "has made several determinations that the Defendant has the ability to pay" and that Storm has stipulated to payment plans in the past. Because Storm has submitted no transcripts to show otherwise, this court must assume that the missing material supports the trial court's ruling. This court affirms.

¶2 This all began with an opinion from this court regarding Storm's appeal of a conviction for false swearing. ***State v. Daniel Slaughter***, No. 98-0404-CR, unpublished slip op. (WI App Sept. 2, 1998). Storm (then named Slaughter) sought to withdraw his guilty plea on grounds that are irrelevant now. He also asserted that it was error for the trial court to fine him $5000 without determining his ability to pay. Correlatively, he objected to the $1200 added as costs because those costs had not been proven. As to the $5000 fine, we rejected the State's concession that Storm was entitled to a determination of his ability to pay, because it is the defendant's burden to apply for relief from a fine if he or she is unable to pay. We instructed Storm that if he were to find "himself in danger of jail time for nonpayment of a fine and wants to apply to the court for relief at that time due to indigence, he may do so." As for the $1200 in costs, we agreed with Storm that there was no verification of those and therefore vacated that portion of the judgment that imposed the fine and remanded with directions that the State prove up its costs.

¶3 Most recently[2] Storm was arrested on a contempt warrant, emanating from collection of the fine imposed by the judgment of conviction and a related stipulation and payment plan established in 2003. He objected on the grounds that there had never been a hearing on his ability to pay, as mandated by this court, and that there had never been a hearing regarding the costs either. He so moved, and the circuit court rendered an order denying relief. The circuit court detailed the history of the record, none of which Storm has provided to us on appeal. It is not necessary to recite that history in detail. Suffice it to say, the court found that "[t]he Defendant has appeared in court and has, on several occasions, agreed to a payment plan. The court has made several determinations that the Defendant has the ability to pay; and early on, established a payment schedule pursuant to the proceedings in 2003." Later in the court's order, the court again restated that Storm had several hearings on his ability to pay.

¶4 It would have been nice had Storm provided us with the transcripts of those hearings so that we could see for ourselves what happened which resulted in the stipulation. But he did not. The law is that, when we are not provided with transcripts, we must assume that they would support the trial court's finding. ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993) ("when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling"). Because we make that assumption, no further discussion need be made. We affirm.

[2] Storm asserts he was arrested in 2012 on the contempt warrant, but no such warrant or arrest is documented in the record on appeal. The circuit court's decision relates that after a stipulation and order and a payment plan established in 2003, Storm "next appeared in court on 17 July 2013, in custody, for non payment of the fine."

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.