

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP107-CR

Cir. Ct. No. 2007CF178

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GERALD ALLEN CROWE,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Sawyer County:
GERALD L. WRIGHT, Judge. *Affirmed; vacated.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Gerald Crowe appeals amended judgments of conviction that added statutorily mandated costs. He also appeals a judgment for unpaid fines, forfeitures, and other financial obligations. When the circuit court granted relief pending appeal, it noted errors in the amended judgments. This

court retained jurisdiction and remanded the matter to the circuit court to correct the errors pursuant to WIS. STAT. § 808.075(6) (2011-12).¹ The court corrected the judgments and Crowe has not filed an objection to the revised judgments as allowed by § 808.075(8). Therefore, we review the amended judgments as revised on remand. Crowe contends the circuit court lacked authority to impose statutorily mandated costs that were not imposed at the time of sentencing. We reject that argument and affirm the judgments as amended on remand. However, because the subsequent judgment for unpaid costs may be affected by the revisions made on remand, and we are unable to determine the correct amount owed from the record before this court, we vacate the December 26, 2012 judgment for unpaid costs.

¶2 In 2008, Crowe entered no contest pleas to Count One, homicide by intoxicated use of a motor vehicle; Count Three, hit-and-run resulting in death; and Count Five, operating a motor vehicle while intoxicated, causing injury. The court, Judge Norman Yackel presiding, ordered Crowe to pay funeral expenses and imposed some statutory costs. After the court entered a commitment order for nonpayment of the costs, victim surcharges and interest, Crowe filed a “Motion for Order to Correct the Record” in which he sought to modify the costs and the due date for payment. The circuit court, Judge Eugene Harrington presiding, denied the motion. The clerk then entered amended judgments of conviction on December 6, 2012, that imposed additional costs and included duplication of some costs, particularly doubling the restitution for funeral expenses. On December 26, 2012, the court, Judge Gerald Wright presiding, entered a judgment for unpaid

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

finances, forfeitures and other financial obligations totaling \$457.30. Crowe appeals the December 6 and December 26, 2012 judgments.

¶3 Some of the issues Crowe raises on appeal are not properly before this court. Crowe did not appeal the 2008 judgments of conviction, the commitment orders, or an April 28, 2011 judgment for unpaid fines, forfeitures and other financial obligations totaling \$113.00. A defendant cannot induce the court to make the same ruling twice and then appeal from the second ruling, in effect giving himself an extension of time for commencing an appeal. *See Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972). Therefore, Crowe's complaints about the amount of the crime/victim surcharge and the due date for payment of the costs imposed on Count Three are not properly before this court.

¶4 Crowe's primary challenge to the December 6, 2012 amended judgments is based on the erroneous assertion that the court lacked authority to impose statutorily mandated costs that were not imposed at the time of sentencing. At the time Crowe was sentenced, WIS. STAT. § 814.60 required the court to collect a fee of twenty dollars and stated, "A defendant shall pay the costs, fees, and surcharges imposed under this chapter." Under WIS. STAT. § 973.045, defendants were also required to pay a mandatory victim and witness surcharge and a ten percent restitution surcharge. *See* WIS. STAT. §§ 973.045(1); 973.20; 973.06(1)(g) (2007-08). Because those costs were mandatory, the court was required to impose them regardless of whether the court noted them at the time of sentencing.

¶5 Crowe's other complaints regarding the amount of costs, particularly doubling the funeral expenses and other duplications, were corrected by the court on remand. Because Crowe did not file an objection to the judgments as amended

on remand, he has forfeited any right to challenge the costs imposed in those judgments.

¶6 The December 26, 2012 judgment for unpaid fines, forfeitures and other financial obligations indicates the total amount not paid was \$457.30. We cannot determine from the record before this court whether that figure depends upon the December 6, 2012 judgments before they were modified on remand. Therefore, we vacate the December 26, 2012 judgment. If the State contends there is still some amount due, or if Crow contends he has overpaid the costs in light of the revisions made on remand, the State or Crowe must file a motion in the circuit court and present appropriate proof of the amount already paid and the amount due pursuant to the judgments as amended on remand.

By the Court.—Judgments affirmed; vacated.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

