COURT OF APPEALS
DECISION
DATED AND FILED

May 25, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

Nos. 99-2103-CR
99-2104-CR
99-2105-CR

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

NO. 99-2103-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

MICHELLE L. DENZER,

DEFENDANT-RESPONDENT.

NO. 99-2104-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

TIMOTHY R. RAGNER,

DEFENDANT-RESPONDENT.

99-2105-CR

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

SHANNON C. KRAUSE,

DEFENDANT-RESPONDENT.

APPEAL from orders of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Affirmed.*

¶1 EICH, J.[1] The State appeals from orders dismissing the charges against Michelle Denzer, Timothy Ragner and Shannon Krause, arguing that the trial court improperly "created" deferred prosecution agreements for all three defendants. We see the dispositive issue as whether the State waived any challenge to the court's orders by failing to timely object, and we conclude that it did.

¶2 The three defendants entered guilty pleas to misdemeanor drug offenses. In each instance, the court stated that it would "continue" the case and, if the defendant stayed out of trouble for a certain period of time, the charge would

[1] This appeal is decided by a single judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98).

be dismissed. Eventually the court dismissed all three cases, and the State appeals.[2]

¶3 Generally, issues which are not adequately raised before the trial court will not be considered for the first time on appeal. *See* ***State v. Holland Plastics Co.***, 111 Wis. 2d 497, 504, 331 N.W.2d 320 (1983). In ***State v. Erickson***, 227 Wis. 2d 758, 596 N.W.2d 749 (1999), the supreme court explained:

> The waiver rule exists to cultivate timely objections. Such objections promote both efficiency and fairness. By objecting, both parties and courts have notice of the disputed issues as well as a fair opportunity to prepare and address them in a way that most efficiently uses judicial resources. If the waiver rule did not exist, a party could decline to object for strategic reasons and raise the error only when that party needed an advantage at some point in the trial. Similarly, judicial resources, not to mention the resources of the parties, are not best used to correct errors on appeal that could have been addressed during the trial.

Id. at 766.

¶4 With respect to Denzer; after she entered her plea the court indicated that it would not accept the plea and enter judgment at that time, but would instead adjourn the case for six months and, if Denzer didn't commit any further violations of the law or ordinances during that period, the charge would be dismissed. The State did not raise any objection at that time. It was only when the case was re-called six months later and the court dismissed the complaint based on Denzer's good behavior, that the prosecutor stated, without further explanation: "Judge, for the record, I would like to object on behalf of the State." Not only was

[2] The three cases were consolidated on appeal.

the objection general, failing to appraise the court of any specific grounds,[3] but it was raised six months after the court stated its ruling and continued the case. As we discuss below, had the State wished to preserve the issue for appeal, it should have raised its objection contemporaneously with the actions of the court that it is now appealing.

¶5 In Ragner's case, as in Denzer's, the court stated it would not enter judgment on the plea, but would continue the case for nine months and, if Ragner stayed out of trouble and sought treatment for alcoholism during that time, the charge would ultimately be dismissed. There was no objection by the State until Ragner's appearance before the court nine months later, when the prosecutor stated: "For the record, if the court intends to dismiss the charges, the State will object.… [I]t's the State's position that there's no authority, statutory or constitutional, for the court to on its own motion dismiss." The court, finding that Ragner had complied with the earlier conditions, dismissed the charge. While the prosecutor's objection was specific, it was untimely. *See* ***State v. Erickson***, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999), where the court recognized that the waiver rule "exists to cultivate timely objections to promote both efficiency and fairness" in the judicial process by giving the parties and the judge "notice of the disputed issues as well as a fair opportunity to prepare and address them in a way that most efficiently uses judicial resources."

[3] An objection that fails to inform the trial court of the "specific grounds on which it is based," is not sufficient to preserve the issue for appeal. ***State v. Corey J.G.***, 215 Wis. 2d 395, 405, 572 N.W.2d 845 (1998). Specificity is required so that the judge and the opposing party are afforded "an opportunity to remedy the defect." ***Id.***, quoting from ***State v. Barthels***, 166 Wis. 2d 876, 884, 480 N.W.2d 814 (Ct. App.1992), *aff'd*, 174 Wis. 2d 173, 495 N.W.2d 341 (1993).

¶6 In Krause's case, while the objection was timely made,[4] it was, like Denzer's, non-specific. All the objection conveys is that the State was objecting to the court's holding the case open. It offers no supporting reasons—no reference to the court's legal authority (or lack of it) to do so, and no reference to any fact-based reasons why the court should not do so.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)(4) (1997-98).

[4] After the court informed Krause at the initial plea hearing that it would defer accepting her plea for seven months, and then dismiss it if she had stayed out of trouble during that time, the prosecutor stated: "Judge, just for the record I'd voice my objection to the holding open of the plea to the possession of marijuana charge." (A.140) The objection was made simultaneously with the court's ruling, and while the objection was made at a point in the hearing several minutes after the court's preliminary announcement of what it planned to do, it was made simultaneously with the court's ruling and gave the court the opportunity to correct any error.