

WISCONSIN SUPREME COURT
JUSTICE ON WHEELS
TUESDAY, OCTOBER 7, 2014
WAUKESHA COUNTY COURTHOUSE
515 W. Moreland Blvd.
ROOM C215

9:20 a.m.

2013AP1163

[State v. Hemp](#)

This case examines the manner in which expunction of a court record of a conviction is accomplished. The underlying Milwaukee County Circuit Court conviction for possession of marijuana with intent to deliver is not at issue. It is uncontested that Kearny W. Hemp successfully completed his probation on that conviction. The trial court record shows that at Hemp's sentencing hearing, the judge indicated she would grant expunction of the conviction upon Hemp's successful completion of probation.

About 8 months after he completed probation, Hemp was charged in Walworth County Circuit Court on one count each of possessing THC, possessing drug paraphernalia and operating while intoxicated. When Hemp sought to verify his Milwaukee conviction had been expunged, questions arose about expunction requirements, and those issues are now before the Supreme Court.

The circuit court ultimately denied expunction of Hemp's conviction, and the Court of Appeals affirmed. The Court of Appeals ruled that a defendant does not receive court-ordered expunction automatically. The Court of Appeals ruled a defendant must affirmatively petition the circuit court by signing and filing "Form CR-266," and fulfilling other filing requirements.

Hemp says the Court of Appeals' interpretation reads significant obligations into § 973.015 not found there, such as the requirement to file the form, obtain various documents, sign the form in front of a notary, and to submit the materials to the circuit court.

In making his case, Hemp cites [Stuart v. Weisflog's Showroom Gallery, Inc.](#), 2006 WI App 109, ¶49, 293 Wis. 2d 668, 721 N.W.2d 127 (courts will not superimpose requirements not expressed by the legislature onto a statute).

Hemp raises the following issues for Supreme Court consideration:

- Was Hemp's conviction expunged upon successful completion of his sentence?
- Was Hemp required to petition the circuit court for expungement upon successful completion of his probation?
- May the circuit court unilaterally modify a sentence, *sua sponte*, to revoke probation that was duly granted?

A decision by the Supreme Court is expected to clarify the requirements for expunction.

10:50 a.m.

2013AP1638-FT

[Outagamie County v. Michael H.](#)

This case examines two issues arising from the court-ordered mental health commitment of Michael H. after a jury trial:

- Do thoughts of suicide or self-harm, without an articulated plan for acting on those thoughts, constitute "threats" of suicide or serious

- bodily harm necessary to establish dangerousness under Wis. Stat. § 51.20(1)(a)2.a.?
- Was the evidence sufficient under a second standard specified in Wis. Stat. § 51.20(1)(a)2.c., which requires evidence of such impaired judgment, manifested by a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury?

1:50 p.m.

2013AP843-CR

[State v. Alexander](#)

This criminal case examines whether the Court of Appeals may choose to review a case under an ineffective assistance of counsel analysis, even though that claim was not raised the lower court or in the parties' appellate briefs.

In January of 2012, Danny Robert Alexander was charged with and pled guilty to one count of felony forgery. He was convicted for cashing two checks worth a total of \$3,203.36 on someone else's account while he was on extended supervision for another offense.

The court ordered a presentence investigation (PSI) report. The report was prepared by a probation agent, but not the agent who had been supervising the defendant's most recent period of supervision. The PSI was compiled from Department of Correction (DOC) supervision file materials and interviews of collateral witnesses.

The agent attached a copy of two statements Alexander had made to his probation agent as part of a revocation in a different case. In the statements, Alexander admitted cashing two other checks on another account that did not belong to him. The DOC forms on which the statements appeared indicated that the defendant was to "account in a truthful and accurate manner" for his activities and that failure to do so would be a violation for which he could be revoked. The form stated that "none of [the] information [in the DOC forms] can be used against me in criminal proceedings." Defense counsel told the court that the PSI author had never actually interviewed Alexander.

The court said, in reliance on the PSI, that the defendant engaged in continued criminal activity, and that he had been revoked multiple times. Alexander was sentenced to three years of initial confinement and four years of extended supervision.

Alexander filed a post-conviction motion asking for a new sentence. He argued that the PSI author had wrongfully included the DOC forms containing incriminating statements made to the probation agent. He also alleged that his attorney never reviewed the PSI report with him. The sentencing court denied the motion. Alexander appealed, and the Court of Appeals reversed. The Court of Appeals noted that a person may not be compelled in any criminal case to be a witness against himself, and the privilege against self-incrimination extends to persons on probation.

The state argued that because defense counsel failed to object to the inclusion of the statements at the sentencing hearing, the defendant forfeited his right to pursue the issue on appeal. In the alternative, the state argued that the statements were not actually incriminating and that the erroneous inclusion of the statements in the PSI was harmless.