**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**September 5, 2013**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2013AP893** **Cir. Ct. No. 2013CV359**

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

**CITY OF MADISON,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RAY A. PETERSON,**

**DEFENDANT-APPELLANT.**

APPEAL from an order of the circuit court for Dane County: NICHOLAS MCNAMARA, Judge. *Affirmed*.

¶1 BLANCHARD, P.J.[1] Ray Peterson appeals pro se from a circuit court order affirming a municipal court order finding him guilty on nine of eleven

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

alleged violations of the City of Madison ordinances, Chapter 27 ("Minimum Housing and Property Maintenance Code"), and imposing forfeitures for the violations plus costs and assessments totaling $21,993.90. As explained in further detail below, Peterson fails to make any meritorious argument on appeal. I therefore affirm the circuit court's order.

## BACKGROUND

¶2 The violations alleged against Peterson pertain to rental property he owns at 119 North Ingersoll Street in Madison. The violations were prosecuted by the respondent City of Madison and tried in municipal court. The municipal court found Peterson guilty on all but the seventh and tenth of the eleven counts alleged. The court imposed a forfeiture of $10 per violation per day plus costs, for a total of $14,679.60.

¶3 Peterson requested review in the circuit court, pursuant to WIS. STAT. § 800.14. On the request form, Peterson selected the option of a "trial on the record." This was a request that the circuit court review the municipal court record and issue a decision based on that record, as opposed to holding a new trial at which the circuit court could take additional evidence. *See* § 800.14(4) an (5).

¶4 The circuit court held a non-evidentiary hearing, at which the court indicated that it had reviewed the municipal court record and heard argument from the parties. The court found Peterson guilty of the same nine counts. The court then proceeded to hold a sentencing hearing and, after considering additional factual assertions from the parties, increased the forfeiture to $15 per violation per day, plus costs and assessments, for a total of $21,993.90.

¶5 As indicated above, Peterson appeals the resulting circuit court order. He proceeds pro se, as he did in the circuit court and municipal court.

## DISCUSSION

¶6 Courts may, and frequently do, give some leeway to pro se parties. *See* ***Waushara Cnty. v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). As explained below, this court grants some leeway to Peterson in this appeal. However, a pro se party must nevertheless comply with relevant rules of procedural and substantive law. ***Id.*** One well-established rule of procedure is that the court need not address arguments that are inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶7 Peterson's briefing is highly inadequate in multiple respects. It fails to set forth coherent arguments and provides few citations to legal authority or the record. In addition, Peterson repeatedly refers to information that is not in the record, including by attaching non-record documents to his brief. *See* ***Roy v. St. Lukes Medical Ctr.***, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256 (appellate court is limited to matters in the record and will not consider any materials that are not in the record). In some instances, Peterson appears to be referencing issues or information from other cases. In particular, Peterson refers to "13SC183" and "12MOR6142," which are apparently numbers associated with other inspections or cases, neither of which correspond to the proceedings in this case.[2] This is not a legal fine point or mere technicality. Fundamental fairness requires an appellate court to rest its decision on the record developed below.

[2] The record reflects that the municipal court case number for this case is 12MOR5541.

¶8 For these reasons, I could grant the City's request to strike Peterson's principal brief and resolve this appeal in the City's favor on that basis. Instead, however, I will give Peterson the benefit of the doubt and address his primary arguments to the extent that they appear relevant to this case and to the extent that I can discern them.[3]

¶9 Peterson appears to argue that the municipal court should have admitted into evidence, and in some manner enforced in this case, two written offers of settlement that the City provided to Peterson. He attaches copies of these offers to his principal brief, even though those offers are not part of the record. As already indicated, this court cannot consider these written offers because they are not part of the record in this case. *See* ***Roy***, 305 Wis. 2d 658, ¶10 n.1.

¶10 Moreover, even if I could consider the offers, Peterson does not show how they might matter. Each offer, on its face, pertains to *other* properties that Peterson owns, not to the 119 North Ingersoll property that is the subject of this case. Both offers state that "119 N. Ingersoll (12MOR5541) is NOT included in this offer, as there was a litigated trial on that case," presumably referring to the trial before the municipal court, which both offers post-date.

¶11 Peterson also makes a number of assertions that can be characterized as a claim that the prosecutor and building inspection unit engaged in "vindictive,"

[3] I note that Peterson's arguments, although divided into subheadings, include numerous off-topic assertions that I do not discuss. "A party must do more than simply toss a bunch of concepts into the air" with the hope that a court or opposing party will "arrange them into viable and fact-supported legal theories." ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Among the assertions by Peterson I do not discuss are those relating to notice. Peterson appears in isolated portions of his briefing to assert that he did not receive adequate notice of certain violations. Neither the legal nor factual basis for this assertion is apparent from Peterson's briefing or from the record.

that is discriminatory or selective, enforcement against him. Peterson fails to even cite, much less apply, pertinent legal standards. Those standards include the following:

> "Exercise of [prosecutorial] discretion necessarily involves a degree of selectivity." For this reason, a prosecutor's conscious exercise of some selectivity in enforcement does not in itself create a constitutional violation. A violation of the Fourteenth Amendment of the United States Constitution will occur, however, when a defendant can show "persistent selective and intentional discrimination in the enforcement of the statute in the absence of valid exercise of prosecutorial discretion."

***State v. Kramer***, 2001 WI 132, ¶14, 248 Wis. 2d 1009, 637 N.W.2d 35 (citations omitted). Peterson also fails to provide factual support to support such a claim. Therefore, this court cannot consider Peterson's discriminatory or selective enforcement claim further. I note that the record shows that Peterson had the opportunity in the municipal court to submit evidence to support a discriminatory or selective enforcement claim, but he failed to submit such evidence.[4]

¶12 If Peterson means to suggest that discriminatory or selective enforcement is demonstrated by nothing more than the fact of repeated inspections of various properties he owns, or by a large number of alleged code violations on those properties, he is wrong. Similarly, if Peterson means to suggest that discriminatory or selective enforcement is demonstrated by nothing more than a decision by City officials not to extend to him discretionary reprieves or other

[4] Peterson repeatedly refers in his briefing to alleged testimony or statements by the director of the City's building inspection division and to other information that is not a part of the record in this case, but which may be part of the record in some other case. In the case on appeal, Peterson submitted no exhibits, and the only witnesses were Peterson and an enforcement officer with the City's inspection division.

forms of leeway after his alleged repeated failures to maintain his properties consistently with City code, he is also wrong.

¶13 Peterson appears to argue that he should not have been found guilty on some or all violations because he had legitimate reasons for failing to make required repairs in a timely fashion, such that in at least some instances it would have been "impossible" for him to timely comply with City code provisions. Those reasons include Peterson's assertions that the amount of repair work was too great for his employees to timely complete it and that, in at least one instance, a tenant allegedly refused to allow his employees entry to make needed repairs. I will assume without deciding that: (1) these factual assertions are contained in Peterson's testimony, and (2) such testimony, if accepted as true, would have constituted a legal defense to some of the alleged ordinance violations on which Peterson was found guilty. Even granting these assumptions for the sake of argument, Peterson provides no reason to conclude that the municipal court was bound to accept Peterson's version of the facts on these matters. *See* ***Lessor v. Wangelin***, 221 Wis. 2d 659, 668, 586 N.W.2d 1 (Ct. App. 1998) (when a court acts as the fact finder, that court is the final arbiter of witness credibility). In other words, the municipal court, acting as fact finder, was not obligated to credit Peterson's testimony regarding his asserted reasons for failing to make repairs. Moreover, Peterson fails to explain why his testimony, even if credited, necessarily dictated different outcomes under any legal authority.

¶14 Peterson makes a cursory argument, also not supported by legal authority, that the circuit court lacked "jurisdiction" to increase the amount of the forfeiture. Peterson does not show that he raised this issue in the circuit court. To the contrary, Peterson failed to object when the circuit court indicated at the outset that the court interpreted WIS. STAT. § 800.14 as allowing it to impose a forfeiture

different from the one the municipal court imposed. In fact, Peterson affirmatively sought to have the circuit court consider additional information during the sentencing phase of the hearing in an apparent attempt to persuade the circuit court to lower the forfeiture amount. Thus, Peterson took the position in the circuit court that the circuit court could modify the forfeiture amount that the municipal court imposed. For these reasons, I consider Peterson's "jurisdiction" argument forfeited and need not address it further. *See* ***State v. Ndina***, 2009 WI 21, ¶¶29-30, 315 Wis. 2d 653, 761 N.W.2d 612 (failure to timely raise an argument in the circuit court forfeits the argument on appeal). Moreover, even if Peterson had preserved this argument, I would decline to address it as insufficiently developed on appeal.[5]

¶15 Finally, Peterson appears to argue that the circuit court improperly considered, or erroneously weighed, certain information during the hearing that the circuit court held. For purposes of this argument, I assume without deciding that the circuit court had the authority to modify the forfeiture amount, because Peterson failed to preserve that issue as explained above. The information to which Peterson refers includes the prosecutor's assertion that a different circuit

[5] Development of this argument would seem to require a more detailed discussion of relevant statutory provisions and case law. The applicable statute, WIS. STAT. § 800.14, is largely silent as to circuit court procedures in reviewing a municipal court decision "on the record." *See* § 800.14(4) and (5); ***City of Middleton v. Hennen***, 206 Wis. 2d 347, 353, 557 N.W.2d 818 (Ct. App. 1996) (noting party's concession that § 800.14(5) "is simply silent on the process to be employed in hearing the appeal"); *see also* ***Hennen***, 206 Wis. 2d at 353-55 (concluding that circuit court is not required to hold a hearing or allow briefing when review is on the record, but using reasoning that would support the circuit court's discretion to do so); ***City of Pewaukee v. Carter***, 2004 WI 136, ¶45, 276 Wis. 2d 333, 350, 688 N.W.2d 449 ("Section 800.14(4) … gives the circuit court the right to grant a new trial on its own motion"); *but see* ***Village of Williams Bay v. Metzl***, 124 Wis. 2d 356, 361, 369 N.W.2d 186 (Ct. App. 1985) (a review "on the record" under § 800.14 "limits the circuit court to an examination of the transcript to determine whether the evidence supports the municipal court decision").

court judge had referred to Peterson as a "slumlord" and the prosecutor's characterization of the violations in question here as involving predominantly "cosmetic" issues, rather than safety issues. Peterson does not explain why this court should conclude that either of these assertions undermines his convictions or his sentence. And, as far as I can discern from the record, the court heard and considered this information, along with the factual allegations that Peterson offered, only for purposes of sentencing, not for purposes of whether Peterson was guilty of the alleged violations. Thus, the procedure the circuit court followed appears to have comported with the searching inquiries and broad exercise of discretion that courts are to employ in sentencing. *See* ***State v. Holloway***, 202 Wis. 2d 694, 700, 551 N.W.2d 841 (Ct. App. 1996) ("The weight to be given each sentencing factor is left to the sentencing court's broad discretion."); ***State v. Pope***, 107 Wis. 2d 726, 729-30, 321 N.W.2d 359 (Ct. App. 1982) (The circuit court "is given wide latitude to gather information for sentencing purposes without being bound by the traditional rules of evidence."). Peterson does not argue that the sentencing procedure that the circuit court followed violates WIS. STAT. § 800.14, nor does Peterson supply any other legal authority to support such an argument.[6]

## CONCLUSION

¶16 For all of the reasons stated, the circuit court's order is affirmed.

[6] I note that Peterson also does not dispute that the maximum forfeiture for his violations is $1,000 per violation per day, far above the $10 and $15 per violation per day that the municipal court and circuit court imposed.

*By the Court*.—Order affirmed.

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