

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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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. 2025AP1435-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2022CF1103

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRY LEE ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: KARL HANSON, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Graham, P.J., Kloppenburg, and Nashold, JJ.

¶1 GRAHAM, P.J. Terry Anderson was convicted of five criminal counts, three of which the circuit court previously dismissed with prejudice in a separate 2021 criminal case. It is now undisputed that the court did not have the

authority to dismiss the three counts *with prejudice* in the 2021 case. Even so, that is what the court ordered, and the State did not seek reconsideration or appeal. It instead initiated this case, in which Anderson was charged with and convicted of the same counts.

¶2 In this appeal, Anderson argues that the circuit court should have granted his pretrial motion to dismiss those counts because the court's order dismissing the counts with prejudice as part of the 2021 case was not void and the court did not have the authority to disregard its prior dismissal order, no matter how erroneous the dismissal with prejudice may have been. We agree. Therefore, we reverse the judgment of conviction in part, as well as the relevant portion of the order denying Anderson's postconviction motion. We remand with instructions to enter an amended judgment of conviction that vacates the convictions for the counts that were dismissed with prejudice in the 2021 case.

BACKGROUND

¶3 The facts underlying this case stem from an incident that occurred on August 13, 2021, when officers were dispatched to a grocery store based on a report that a man appeared to be intoxicated and was causing a disruption. The officers determined that the man, who they identified as Anderson, had driven to the store, that his driver's license was revoked, and that he was out on bond with a no-alcohol condition. Officers made contact with Anderson, who refused to submit to field sobriety testing and was arrested.

¶4 The State charged Anderson with four counts in Rock County Case No. 2021CF794 (the "2021 case"): operating a motor vehicle while under the

influence of an intoxicant (OWI) as a fourth offense, disorderly conduct, and two counts of felony bail jumping.¹ On the morning a jury trial was set to begin, the State asked the circuit court for a continuance, which the court denied. The State then moved to dismiss all counts without prejudice. Anderson argued that the dismissal should be with prejudice.

¶5 In an oral ruling, the circuit court ordered that the OWI count would be dismissed without prejudice but that the three remaining counts (the disorderly conduct and bail jumping counts) would be dismissed with prejudice. The court’s written order indicated that all four counts were “Dismissed on Prosecutor’s Motion.”

¶6 Later that day, the State filed the complaint that initiated this case, Rock County Case No. 2022CF1103. The complaint charged Anderson with the same four counts, which were based on the same facts about his conduct at the grocery store on August 13, 2021. The State also added a fifth count of operating a motor vehicle with a prohibited alcohol concentration (PAC) as a fourth offense. The case, which we sometimes refer to as the “2022 case,” was assigned to the same circuit court judge who had handled the 2021 case.

¹ The record in this appeal does not appear to include any transcripts or other documents from the 2021 case. The charges and disposition of the 2021 case can be found in docket entries on the publicly available case management system maintained by Wisconsin’s Consolidated Court Automation Programs (CCAP). CCAP “is not the official record of a criminal case,” *State v. Bonds*, 2006 WI 83, ¶46, 292 Wis. 2d 344, 717 N.W.2d 133, but we may take judicial notice of CCAP entries. See WIS. STAT. § 902.01(2)(b) (2023-24); *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

All references to the Wisconsin Statutes are to the 2023-24 version.

¶7 Anderson filed a motion asking the circuit court to dismiss the disorderly conduct and bail jumping counts. He argued that “double jeopardy ha[d] attached” in the 2021 case and that the State did “not have jurisdiction to refile charges that were dismissed with prejudice.”

¶8 In response, the State took issue with Anderson’s assertion that jeopardy had attached in the 2021 case. It argued that jeopardy had not attached because the charges were dismissed before a jury was sworn in. And it cited *State v. Braunsdorf*, 98 Wis. 2d 569, 297 N.W.2d 808 (1980), for the proposition that, because jeopardy had not attached, the circuit court lacked the authority to dismiss any counts in the 2021 case with prejudice. From this, the State appeared to conclude that nothing prevented it from reissuing all counts from the 2021 case, including the counts that the court had erroneously dismissed with prejudice.

¶9 The circuit court held a hearing on the motion to dismiss. Anderson argued that the State’s position—that the court lacked authority to dismiss the disorderly conduct and bail jumping counts with prejudice—would have been an appropriate argument to make in an appeal of the dismissal of the 2021 case. However, Anderson argued, it was not a basis to deny his motion to dismiss those counts in this 2022 case.²

¶10 The circuit court denied Anderson’s motion. It reasoned that jeopardy had not attached in the 2021 case, and that it should not have dismissed the disorderly conduct and bail jumping counts with prejudice. The court said that

² During the circuit court proceedings, the State questioned whether it could have challenged the circuit court’s dismissal with prejudice in an appeal in the 2021 case, given that the court did not use the phrase “with prejudice” in its written order. But the State does not renew that argument on appeal, and we discuss it no further.

it could not go back and fix its error in the 2021 case because it had issued a final judgment, and the 2021 case was over. However, the court determined, it would be disingenuous to grant Anderson’s motion to dismiss the counts in this 2022 case, now that the court knew that the previous dismissal with prejudice in the 2021 case would not have “survive[d] on appeal.”

¶11 This case proceeded to a jury trial, in which Anderson was found guilty of all five counts. Postconviction, Anderson renewed his argument that the State should not have been allowed to refile the disorderly conduct and bail jumping counts, and he asked the circuit court to vacate his convictions of those counts. The State asserted that Anderson was wrong to argue that the court was bound by the error the court made in the 2021 case. It argued that the court had the inherent authority to correct its error, and its decision to allow the disorderly conduct and bail jumping counts to proceed to trial in the 2022 case amounted to correcting its error in the 2021 case.

¶12 Following a hearing, the circuit court denied Anderson’s motion. The court again acknowledged that it had been wrong to dismiss the counts in the 2021 case with prejudice, and it indicated that it would use its “apparent authority” to correct that mistake by denying the postconviction motion in this case. In doing so, the court said, the prosecution and defense would be restored to the positions they would have been in had the court not erroneously dismissed the charges with prejudice in the 2021 case.

DISCUSSION

¶13 Anderson appeals his judgment of conviction and the circuit court’s denial of his postconviction motion to vacate his convictions of the disorderly conduct and bail jumping counts. As part of this appeal, Anderson seeks to

challenge the court’s denial of his pretrial motion to dismiss those same counts. See WIS. STAT. § 809.10(4) (providing that an appeal from a final judgment or final order brings before the court all prior nonfinal orders).³

¶14 The **Braunsdorf** decision provides an important backdrop for the arguments in this appeal. See **Braunsdorf**, 98 Wis. 2d 569. In **Braunsdorf**, our supreme court determined that a circuit court “do[es] not possess the power to dismiss a criminal case with prejudice prior to the attachment of jeopardy[,] except in the case of a violation of a constitutional right to a speedy trial.” *Id.* at 586.

¶15 It is undisputed that the circuit court violated this rule from **Braunsdorf** in the 2021 case, when it dismissed the disorderly conduct and bail jumping counts with prejudice. Yet the State did not attempt to correct the court’s error in the 2021 case either through a motion for reconsideration or an appeal. Instead, the State argues that it was allowed to disregard the existence of the dismissal order because the court lacked the authority to enter that order, leaving the State free to refile the charges and secure convictions as if the dismissal order had no legal effect.

¶16 We have determined that the resolution of this appeal turns on two issues: (1) the legal effect of a dismissal with prejudice; and (2) whether the dismissal order was “void” or “voidable” as a result of the circuit court’s erroneous dismissal with prejudice in the 2021 case. Both issues present questions of law, which we review de novo. **State v. White**, 2008 WI App 96, ¶9, 312

³ On appeal, Anderson does not renew an argument that he included in his postconviction motion: that the circuit court should also vacate his convictions of the OWI and PAC counts and should order a new trial on those counts. We discuss that argument no further.

Wis. 2d 799, 754 N.W.2d 214.⁴ We ordered the parties to address these questions in supplemental letter briefs.

¶17 The parties more or less agree as to the legal effect of a dismissal with prejudice.⁵ If a case is dismissed without prejudice, the claims that were dismissed in that case may be brought again in a future action. *See Without Prejudice*, BLACK’S LAW DICTIONARY (12th ed. 2024); *see also Miller Compression Co. v. Busby*, 2025 WI App 29, ¶57, 416 Wis. 3d 354, 21 N.W.3d 778; *State v. Davis*, 2001 WI 136, ¶19, 248 Wis. 2d 986, 637 N.W.2d 62. By contrast, a dismissal with prejudice “protect[s] the defendant[] from the risk of further litigation” by barring any future action on the same claims. *Miller Compression Co.*, 416 Wis. 3d 354, ¶57; *With Prejudice*, BLACK’S LAW DICTIONARY (12th ed. 2024).

¶18 Here, as noted, the dismissal of the disorderly conduct and bail jumping counts was with prejudice. This means that the dismissal order protected Anderson from further litigation on those counts, unless there was some other reason that the dismissal order had no legal effect.

⁴ The State asserts that the circuit court’s decision with respect to Anderson’s motion to dismiss was discretionary, and that we must affirm unless we can say that “no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion.” But the State does not cite any legal authority to support the proposition that a motion like Anderson’s, which asked the court to dismiss charges based on the legal effect of a prior court order, presents a matter within the court’s discretion. In any event, we have determined that the appeal turns on the above-stated questions of law, and to the extent the motion called for an exercise of discretion, a court erroneously exercises its discretion if it misapplies the applicable law. *State v. Smith*, 203 Wis. 2d 288, 295, 553 N.W.2d 824 (Ct. App. 1996).

⁵ The State adds a qualification that their position “*assumes* that the [circuit] court had the authority to dismiss with prejudice.” But this qualification blurs the lines between the two issues we ordered the parties to address. We address the State’s argument about the court’s lack of authority to dismiss with prejudice as part of our discussion of whether the dismissal order was void or voidable as a result of the court’s mistake.

¶19 From this, we determine that the dispositive issue is whether the dismissal order from the 2021 case was *void* or merely *voidable* due to the circuit court’s error in dismissing the counts with prejudice. This is because a void order “is not binding upon anyone,” ***State v. Campbell***, 2006 WI 99, ¶42, 294 Wis. 2d 100, 718 N.W.2d 649, and “may be ignored altogether,” ***Cowie v. Strohmeyer***, 150 Wis. 401, 440, 136 N.W. 956 (1912). On the other hand, an order that is voidable has “the same force and effect as any other valid order until it has been set aside.” ***Campbell***, 294 Wis. 2d 100, ¶42; *see also Kett v. Community Credit Plan, Inc.*, 222 Wis. 2d 117, 128, 568 N.W.2d 68 (Ct. App. 1998) (concluding that a voidable judgment is binding and protects actions taken in reliance on it until the judgment has been vacated or reversed). Therefore, in this case, the court did not err by disregarding the dismissal order from the 2021 case if the dismissal order was void, but the court did err if the dismissal order was merely voidable.

¶20 The parties disagree on the standard for determining whether an order is void. The State appears to be arguing that an order is void if, *for any reason*, the issuing court lacked authority to issue the order, but the State does not cite any legal support for this argument. There may be any number of scenarios in which a court may lack authority to issue a particular kind of order, but Wisconsin case law provides that only certain defects will render an order void. ***Campbell***, 294 Wis. 2d 100, ¶¶42-43. We agree with Anderson, who engages with Wisconsin case law that specifically addresses this issue.

¶21 Anderson cites ***Campbell***, which identifies three conditions that must be present for a judicial order to be valid: “(1) the court has subject matter jurisdiction; (2) the court has personal jurisdiction; [and] (3) adequate notice has been afforded the affected persons.” ***Id.***, ¶43. An order is valid if *all* of those three conditions are present, but it is void if *any* of those three conditions are

absent. **Id.** By contrast, an order that contains legal errors but is otherwise valid is considered voidable, but not void. See **id.**, ¶42; see also **State v. Hershberger**, 2014 WI App 86, ¶10, 356 Wis. 2d 220, 853 N.W.2d 586 (citing **Stimson v. Munsen**, 251 Wis. 2d 41, 44, 27 N.W.2d 896 (1947), for the proposition that an order or judgment, “however erroneous,” must stand until reversed, modified, or set aside, and is not void “merely because it is erroneous”).

¶22 Before applying this standard to the dismissal order from the 2021 case, we note that “[t]he party claiming that the court was without jurisdiction to render the judgment has the burden of proving lack of jurisdiction.” **Kett**, 222 Wis. 2d at 128-29. Accordingly, if there was a defect that rendered the dismissal order from the 2021 case void, it was incumbent on the State to prove that defect. Here, as noted, the State fails to acknowledge the applicable standard from **Campbell**, much less develop any argument about the three conditions from **Campbell** that, if not present, render an order void.

¶23 We now consider whether the conditions from **Campbell** were present when the circuit court issued the dismissal order in the 2021 case. First, the court had subject matter jurisdiction over the 2021 case because a circuit court is never “without subject matter jurisdiction” and may “entertain actions of any nature whatsoever.” **Village of Trempealeau v. Mikrut**, 2004 WI 79, ¶¶1, 8, 273 Wis. 2d 76, 681 N.W.2d 190. This rule comes from a constitutional provision giving circuit courts “subject matter jurisdiction over ‘all matters civil and criminal within this state.’” **State v. Sanders**, 2018 WI 51, ¶21, 381 Wis. 2d 522, 912 N.W.2d 16 (citing WIS. CONST. art. VII, § 8). Second, the court had personal jurisdiction because personal jurisdiction in a criminal case is satisfied upon the filing of an indictment or a complaint that is supported by sufficient probable cause and in compliance with the applicable statute of limitations. **State v.**

Dabney, 2003 WI App 108, ¶10, 264 Wis. 2d 843, 663 N.W.2d 366. There has been no argument in this case to suggest that the criminal complaint in the 2021 case did not meet these requirements. Third, adequate notice was met because the State, which is the affected party here, brought the motion to dismiss the 2021 case and its representative was present at the hearing.

¶24 Accordingly, we conclude that the record, reviewed under the applicable legal standard, does not support the State’s argument that the dismissal order in the 2021 case was void. We acknowledge that the circuit court erred when it dismissed the disorderly conduct and bail jumping counts with prejudice, but the error was not for lack of subject matter jurisdiction, personal jurisdiction, or adequate notice to the affected party. Because the dismissal order in the 2021 case was merely voidable, it remained binding unless and until it was reversed, modified, or set aside. See *Stimson*, 251 Wis. 2d at 44. And because the State did not seek to correct the court’s erroneous dismissal with prejudice by pursuing reconsideration or an appeal, the order bound the State and the court in the 2022 case.

¶25 Therefore, we conclude that the circuit court erred when it disregarded its own ruling in the 2021 case and denied Anderson’s motion to dismiss in the 2022 case, effectively to correct its error in the 2021 case. A court does have the authority to reconsider its own rulings. *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶44, 298 Wis. 2d 468, 727 N.W.2d 546. But here, the court was not reconsidering its ruling in the 2021 case; instead, it impermissibly disregarded the ruling as part of its decisions with respect to a separate case.

¶26 The State’s supplemental brief makes several arguments to the contrary, which we now address. Several of the State’s arguments are based on

the premise that the dismissal order was void. For example, the State cites several cases for the proposition that the circuit court had inherent authority to vacate void orders. See *Kohler Co. v. DILHR*, 81 Wis. 2d 11, 25, 259 N.W.2d 695 (1977); *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 750, 595 N.W.2d 635 (1999); *City of Kenosha v. Jensen*, 184 Wis. 2d 91, 98, 516 N.W.2d 4 (Ct. App. 1994). The State also argues that any error by the court was “harmless” because the court merely returned the parties to the position they would have been in if the court had not issued the void dismissal order. However, as noted, we have determined that the dismissal order was not void.

¶27 The State also argues that the circuit court “did not disregard or ignore its prior order,” and that the court instead “engaged in careful thought and humility when it reconsidered its position on its prior order and realized that it erred.” But these actions are not mutually exclusive. It is true that the court engaged in thoughtful consideration of the parties’ arguments, and carefully explained its reasons for concluding that it had erred in the 2021 case. But in attempting to fix its error in the prior case as part of its decisions in this case, the court applied an improper standard of law, overlooking the fact that it did not have the authority to reconsider and correct its prior dismissal order as part of this case.

CONCLUSION

¶28 We conclude that the circuit court erred when it denied Anderson’s pretrial motion to dismiss the disorderly conduct and bail jumping counts and allowed those counts to proceed to trial, even though those counts were previously dismissed with prejudice in a separate criminal case. Accordingly, we reverse the judgment of conviction in part, as well as the portion of the postconviction order that denied Anderson’s motion to vacate his convictions of the disorderly conduct

and bail jumping counts. We direct the court to enter an amended judgment of conviction vacating the convictions for those counts.

By the Court.—Judgment and order affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.

