

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 16, 1998

Marilyn L. Graves  
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 § 808.10 and RULE 809.62, STATS.

**No. 98-0135-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DUANE E. BOLSTAD,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Reversed and cause remanded with directions.*

DYKMAN, P.J.<sup>1</sup> Duane Bolstad appeals from a judgment convicting him of discharging a firearm within one hundred yards of a building devoted to human occupancy, contrary to § 941.20(1)(d), STATS. He also appeals

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(a), STATS.

from an order denying his postconviction motion. Because we conclude Bolstad was denied his right to a twelve-person jury, we reverse and remand.

At trial, Bolstad moved for a twelve-person jury, arguing that § 745.096(3)(am), STATS., which provides for six-person juries in criminal misdemeanor cases, violated the due process clauses of the United States Constitution and Wisconsin Constitution. The trial court denied his motion. The jury subsequently found Bolstad guilty. After which, Bolstad filed a post-conviction motion, which was denied. He now appeals from his judgment of conviction and from an order denying post-conviction relief.

The State concedes that *State v. Hansford*, No. 97-0885-CR (Wis. June 19, 1998), controls the outcome of this appeal. In *Hansford*, the court held that § 756.096(3)(am), STATS., violates art. I, § 7 of the Wisconsin Constitution. See *Hansford*, No. 97-0885-CR, slip op. at 23. It concluded that “the right to a 12-person jury extends to all criminal defendants, regardless of whether they are charged with a misdemeanor or felony offenses.” See *id.* at 14.

Because Bolstad was not afforded the right to a twelve-person jury, as guaranteed by art. I, § 7 of the Wisconsin Constitution, his conviction for discharging a firearm must be reversed and the cause remanded.

We do not need to reach Bolstad’s claims regarding the effectiveness of his counsel because our reversal makes this issue moot. *Diamond v. Ruszkiewicz*, 212 Wis.2d 143, 146, 567 N.W.2d 649, 652 (Ct. App. 1997). A matter is moot if a determination sought cannot have a practical effect on an existing controversy. *Madison Landfills, Inc. v. DNR*, 180 Wis.2d 129, 144, 509 N.W.2d 300, 306 (Ct. App. 1993).

*By the Court.*—Judgment and order reversed and cause remanded with directions.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.

