

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 28, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**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.

**Appeal No. 2016AP729-CR**

**Cir. Ct. No. 1998CT5997**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**PETER J. LONG,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
JOHN SIEFERT, Judge. *Affirmed.*

¶1 KESSLER, J.<sup>1</sup> Peter L. Long, *pro se*, appeals from an order of the circuit court denying his motion to reopen his case and to commute his sentence.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Because Long has completed his sentence, we conclude that Long's appeal is moot. Accordingly, we affirm the circuit court.

### **BACKGROUND**

¶2 On August 25, 1998, Long was arrested for operating a motor vehicle while under the influence of an intoxicant. As a result, Long was charged with fourth offense OWI and fourth offense prohibited blood alcohol concentration (BAC). The complaint alleged that Long was driving a 1998 Dodge truck, that he had a BAC of .17, and that Long had three previous OWI convictions. The previous offenses occurred in 1989, 1990 and 1995.

¶3 Long pled guilty to OWI as a fourth offense on November 11, 1999.<sup>2</sup> The circuit court sentenced Long to eleven months in the House of Corrections, with Huber release for work and treatment. The court also ordered Long to pay a \$600 fine, the revocation of Long's license for three years, and the seizure of Long's car. On December 2, 1999, a written order was issued requiring the Greenfield Police Department to seize Long's 1998 Dodge truck, which he was driving at the time of the offense.

¶4 Before the seizure was effectuated, the title for the truck was transferred to another owner. The District Attorney's office notified the court that it was unable to proceed with the court's order for seizure. In October 2000, the District Attorney's office again contacted the circuit court, notifying the court that the seizure order was not on file with the Department of Transportation and requesting the court's assistance in enforcing the order. Documents attached to

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<sup>2</sup> The BAC charge and an unrelated disorderly conduct charge were read in.

the letter from the District Attorney's office showed that Long applied for title of the truck in December 1998, but that the vehicle was retitled and registered to J.M.C. as of October 6, 2000.

¶5 On February 24, 2016, Long, *pro se*, filed a WIS. STAT. § 974.06 postconviction motion for relief, essentially arguing that he was entitled to a sentence commutation which would not exceed the maximum sentence for a third offense OWI and requesting that the court order the Greenfield Police Department to reimburse him \$14,600 for his pick-up truck. The basis of Long's motion was his allegation that he was not represented by counsel in his May 14, 1991 OWI conviction in Marathon County and he did not knowingly, voluntarily and intelligently waive his right to counsel. Because that conviction was obtained in violation of his Sixth Amendment right to counsel, Long argued, the circuit court should not have considered that predicate conviction when rendering its sentence and his sentence should therefore conform with a sentence for a third OWI conviction. As to his vehicle, Long alleged that: he purchased the vehicle in 1997 for \$36,000; the vehicle was seized by the Greenfield Police Department; Long bought the vehicle back for \$14,600; and it was then sold at a public auction in 2003.

¶6 The circuit court denied the motion on the grounds that it lacked competency to rule on Long's postconviction motion because Long had completed his sentence. On March 17, 2016, Long, still *pro se*, filed a "Motion to Reopen Motion to Commute Sentence Motion for Reimbursement," essentially arguing that he was entitled to modification of his sentence based on a new factor. (Some capitalization omitted.) The "new factor" was Long's allegation that his Marathon County conviction was obtained in violation of his Sixth Amendment right to counsel. Long again argued that he was entitled to commutation of his sentence to

a sentence not to exceed the maximum for a third OWI offense and that he was entitled to a \$14,600 reimbursement from the Greenfield Police Department for his truck.

¶7 The circuit court denied Long's motion without a hearing, finding both that the court lacked jurisdiction over Long's motion because he completed his sentence, and also that Long's motion was untimely. This appeal follows.

### DISCUSSION

¶8 On appeal, Long asks that we direct the circuit court to reopen his 1999 conviction and modify his sentence. He also asks that we direct the Greenfield Police Department to reimburse him \$14,600 for the costs associated with purchasing his truck back after his conviction. We conclude that because Long has completed his sentence, the issues he raises on appeal are moot.

¶9 A defendant who wishes to challenge a sentence which has already been served generally must overcome two procedural barriers: mootness and competency to proceed. *See State v. Theoharopoulos*, 72 Wis. 2d 327, 332, 240 N.W.2d 635 (1976) (using the terms mootness and subject matter jurisdiction); *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶10-12, 273 Wis. 2d 76, 681 N.W.2d 190 (explaining that circuit courts have general subject matter jurisdiction through the state constitution and that statutory limitations on their exercise of that jurisdiction involve competency to proceed).

¶10 “An issue is moot when its resolution will have no practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. We typically decline to consider such issues.

*See id.* Under certain circumstances, however, we will deviate from this rule and consider a moot point

if the issue has great public importance, a statute's constitutionality is involved, or a decision is needed to guide the [circuit] courts. Furthermore, we take up moot questions where the issue is likely of repetition and yet evades review because the situation involved is one that typically is resolved before completion of the appellate process.

*Id.* (two sets of quotation marks and citations omitted).

¶11 We are not persuaded that deviating from the general rule is warranted here because modifying Long's sentence would have no practical effect. Long completed his sentence many years ago. A modified sentence would have no effect on the time Long has already served. Moreover, the sentence the circuit court imposed for Long's fourth OWI conviction actually was in keeping with the available statutory penalties for OWI third at the time Long was sentenced. In 1998, the time of Long's offense, WIS. STAT. §§ 346.65 (2)(c) and (d) (1997-98), the statutes establishing penalties for third and fourth OWI offenses, provided:

Any person violating s. 346.63 (1):

....

(c) Except as provided in par. (f), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 3, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(d) Except as provided in par. (f), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 4, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

¶12 The statute shows that the maximum penalty for a third OWI offense was the same as the maximum for a fourth. According to WIS. STAT. § 346.65(6)(a) 1. and 2. (1997-98), the circuit court had the discretion to determine whether seizure of a vehicle was necessary for a third OWI conviction:

1. Except as provided in this paragraph, the court may order a law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered seized, shall order a law enforcement officer to equip the motor vehicle with an ignition interlock device or immobilize any motor vehicle owned by the person whose operating privilege is revoked under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a), (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2 prior suspensions, revocations or convictions that would be counted under s. 343.307 (1). The court shall not order a motor vehicle equipped with an ignition interlock device or immobilized if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.
2. The court shall order a law enforcement officer to seize a motor vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10) or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior suspensions, revocations or convictions that would be counted under s. 343.307 (1).

*Id.* Thus, the circuit court's sentence was in keeping with the penalties permitted for a third OWI offense. Modifying Long's conviction would effectively accomplish nothing.

¶13 We also conclude that we are without the authority to order the Greenfield Police Department to reimburse Long. The circuit court ordered Long's vehicle seized pursuant to WIS. STAT. § 346.65 (1997-98) on a finding that the vehicle was subject to forfeiture. The court did not order forfeiture, it ordered that the vehicle was potentially subject to a forfeiture action. Forfeiture is a civil proceeding which is not currently before this court. Accordingly, we cannot order the Greenfield Police Department to reimburse Long.

¶14 Because the issues Long raises on appeal are moot, we need not address the merits of his appeal. For the foregoing reasons, we affirm the circuit court.

*By the Court.*—Order affirmed.

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

