

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 18, 2018

Sheila T. Reiff
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. 2017AP2405

Cir. Ct. No. 2017TR7923

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF FOND DU LAC,

PLAINTIFF-APPELLANT,

V.

WILLIAM A. TAVS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Fond du Lac County:
GARY R. SHARPE, Judge. *Reversed and cause remanded for further proceedings.*

¶1 GUNDRUM, J.¹ County of Fond du Lac appeals from the circuit court's dismissal of its case against William A. Tavs, asserting the court lacked the

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

authority to dismiss the case. Tavs has filed no response.² For the following reasons, we reverse and remand.

Background

¶2 Tavs was cited for operating a motor vehicle without a valid driver's license, a three-point offense requiring a "deposit" of \$200.50. By the time he appeared for his initial appearance, he had gotten his license reinstated. Based upon this, the County moved to amend the charge to operating a motor vehicle without his license on his person, "a zero point amendment," with a \$40 fine and costs. Tavs indicated, and the court found, that he had attended a medical appointment and took both a written and behind-the-wheel test in order to get his license reinstated. Over the County's objection, the court sua sponte dismissed the case. The County asked the court for its "factual or legal" basis for dismissing the case, and the court indicated that Tavs had "gone through quite a bit" and "paid quite a price" in order to reinstate his license. The County then asked the court for "the legal basis," to which the court responded, "I dismiss the charge." In its written "Order for Dismissal" issued nearly three weeks later, the court added that the dismissal was additionally "based upon the fact that the District Attorney had, during that same hearing, dismissed multiple operating after suspension and operating without insurance citations where the defendant brought proof of reinstatement or proof of insurance to the hearing." The County appeals.

² All mail sent to Tavs has been returned.

Discussion

¶3 The County claims the circuit court erred in dismissing the citation against Tavs. We agree.

¶4 Whether the circuit court exceeded its authority is a question of law we review de novo. See *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 747, 595 N.W.2d 635 (1999). Here, as the County points out, the circuit court appears to have dismissed the citation against Tavs simply because it deemed such a move to be the “fair” thing to do. Such a ground for dismissal of a case with prejudice was soundly rejected by our supreme court in *State v. Krueger*, 224 Wis. 2d 59, 588 N.W.2d 921 (1999), wherein the court confirmed that circuit courts do not have such inherent powers. *Id.* at 64. As the *Krueger* court stated, “The circuit court’s conclusion that the State’s conduct violated a sense of fairness cannot displace the State’s lawful exercise of well accepted prosecutorial discretion.” *Id.* at 69.

¶5 The County recognizes that the citation against Tavs was for a civil forfeiture, specifically that this was not a criminal prosecution. Citing *City of Janesville v. Wiskia*, 97 Wis. 2d 473, 293 N.W.2d 522 (1980), the County correctly asserts that our supreme court “has long recognized prosecutions for breaches of municipal ordinances as quasi criminal.” The *Wiskia* court expressed that in such quasi-criminal cases “where the defendant is required as in criminal cases to enter a plea of guilty, not guilty or nolo contendere,” the prosecutor has “broad prosecutorial discretion” regarding whether or not “to charge a defendant and proceed to trial.” *Id.* at 480, 483-84 (citations omitted).

¶6 In this case, even when specifically and repeatedly requested by the County, the circuit court referenced no statute and cited no case law in support of its authority to dismiss the citation against Tavs. On appeal, the County has cited

relevant authority and fully developed its legal position that the court was without legal authority to dismiss the citation, and we have been afforded no argument to the contrary from Tavs. While it is possible legal authority may exist and reasonable argument could be made to challenge the County's position in the context of this civil forfeiture case, we have been presented with no such authority or argument and "we will not abandon our neutrality to develop arguments" for a party. See *Industrial Risk Insurers v. American Eng'g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82. Thus, we conclude the County has met its burden of convincing us the circuit court lacked the authority to dismiss the citation against Tavs.

By the Court.—Order reversed and cause remanded for further proceedings.

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

