

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 8, 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. 2017AP931-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2003CT61

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ERIC W. POIRIER,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Chippewa County:  
STEVEN R. CRAY, Judge. *Affirmed.*

¶1 SEIDL, J.<sup>1</sup> Eric Poirier, pro se, appeals from an order assigning income from his prison account to pay unpaid fines, costs and surcharges assessed by the circuit court as a result of his 2003 conviction for operating a motor vehicle

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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.

with a prohibited alcohol concentration (PAC) as a third offense. We reject Poirier's arguments that the income assignment order was improper and affirm the order.

¶2 In 2003, Poirier pled guilty to third-offense PAC. The circuit court imposed a sentence of thirty days in jail and assessed fines, court costs and surcharges totaling \$1,184. On February 26, 2004, Poirier's driver's license was suspended because of his failure to pay those monetary obligations, and a judgment was entered against Poirier for \$1,189.

¶3 On April 3, 2017, the circuit court entered an order assigning income from Poirier's prison account in the amount of \$1,184.<sup>2</sup> The order contained a notice to Poirier that any objection should be filed in writing.

¶4 On April 25, 2017, Poirier, pro se, filed with the circuit court a document entitled "Income Assignment Order Written Objection Irreparable Harm Caused" (the "objection"). In the objection, Poirier appears to have disputed the income assignment order on four grounds. First, he contended that the court could not "come over 12.5 years later with [an] additional Court Order that increases the penalty for a crime that has already been served. The order for \$1,184.00 must be vacated." Poirier asserted that at a sentencing hearing in Chippewa County Circuit Court case No. 2004-CF19, Judge Roderick Cameron held that the fines, costs and surcharges from his PAC conviction in the present case had been satisfied. Second, in conjunction with that first argument, Poirier appears to have argued

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<sup>2</sup> Neither Poirier nor the State explain why there is a \$5 difference between the judgment lien and the income assignment order. In any event, that discrepancy appears to be immaterial to Poirier's arguments.

that a statute of limitations applied and had expired, preventing imposition of the income assignment order. Third, Poirier argued that the income assignment order was “a civil commitment [that] cannot be [the basis] of a criminal punishment.” Fourth, Poirier argued that the income assignment order violated the constitutional prohibition against ex post facto laws since his sentence had already been served.

¶5 The circuit court responded to Poirier’s objection in a letter to Poirier dated May 10, 2017. In the letter, the court stated it had reviewed the transcript from case No. 2004-CF-19 and rejected Poirier’s argument as having “no factual basis.” Specifically, the court found that, while Poirier completed his jail sentence in the present PAC case, “Judge Cameron did not forgive the fine and costs which were assessed against you in the sum of \$1,189.” The court did not refer to any of Poirier’s other arguments and declined to hold a hearing on his objections.

¶6 On appeal, Poirier phrases his first issue as: “Whether it was illegal for the State of Wisconsin to impose a fine of \$1,189.00 to a sentence already served, and to another criminal case by another judge about 13 years later to enhance [the] present sentence.” (Capitalization altered.) Poirier again argues the income assignment order was impermissible based upon the transcript of the sentencing hearing in case No. 2004-CF-19, which he claims shows that Judge Cameron held that the fines, costs and surcharges in the present case had been satisfied. However, Poirier acknowledges in his reply brief that the transcript of the case No. 2004-CF-19 sentencing hearing reviewed by the circuit court is not in

the record on appeal.<sup>3</sup> As the appellant, Poirier was responsible for including in the appellate record any transcripts necessary to this appeal. *See Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26, 496 N.W.2d 226 (Ct. App. 1993). Without evidence in the appellate record, we must assume the missing transcript supports the circuit court’s finding that Judge Cameron did not forgive the judgment or find it was satisfied and that it remained unpaid when the court entered the income assignment order. *See id.* at 26-27.

¶7 The State argues the income assignment order was properly entered under WIS. STAT. § 973.05(4)(b), which permits a circuit court to enter an income assignment order for unpaid fines, surcharges, costs and fees. Poirier does not address this argument in his reply brief, nor does he assert that his monetary obligations were actually paid in full.<sup>4</sup> Therefore, we interpret Poirier’s failure to refute the State’s argument as an implicit concession that its argument is correct. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

¶8 Poirier also appears to reassert the remaining objections he raised in his circuit court objection. None of his objections have merit. Poirier contends two statutes of limitation are applicable here and expired before entry of the

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<sup>3</sup> The State has included what appears to be a partial transcript of the Chippewa County Circuit Court case No. 2004-CF-19 sentencing hearing in its appendix. A document contained in an appendix is not an adequate substitute for a document in the appellate record. We cannot consider any materials that are contained in an appendix but not in the record on appeal. *Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256.

<sup>4</sup> Instead, Poirier argues that “[t]he Circuit Court lost competency pursuant to [WIS. STAT.] § 961.555(2)(b),” apparently in reference to the time at which the income assignment order was entered. This one-sentence argument lacks any developed reasoning in support and, in any event, is raised for the first time in Poirier’s reply brief, so we will not consider the issue. *See Roy*, 305 Wis. 2d 658, ¶30 n.6.

income assignment order, specifically 28 U.S.C. § 2462<sup>5</sup> and WIS. STAT. § 939.74(1).<sup>6</sup> Both statutes are inapplicable in this context. The federal statute pertains only to the time limits for filing a lawsuit in federal court, and it does not apply in this state court action. Section 939.74(1) pertains to commencement of a “prosecution.” Poirier does not explain—and we cannot conceive of any reason—why entry of the income assignment order would constitute a “prosecution” for the purpose of § 939.74(1).

¶9 Poirier next argues that entry of the income assignment order created an ex post facto violation. We understand his argument to be that the order enhanced his sentence by imposing a new fine. The ex post facto clauses of our federal and state constitutions prohibit laws which make more burdensome the punishment for a crime after its commission. *State v. Scruggs*, 2017 WI 15, ¶14, 373 Wis. 2d 312, 891 N.W.2d 786. Poirier incorrectly assumes the income assignment order constituted a new sentence. As noted above, Poirier does not argue that he ever actually satisfied the financial obligations stemming from his

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<sup>5</sup> 28 U.S.C. § 2462 provides:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

<sup>6</sup> WISCONSIN STAT. § 939.74(1) provides, in relevant part, that

prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

PAC conviction, nor does he argue that entry of the order was improper under WIS. STAT. § 973.05(4)(b). Therefore, the order did not make more burdensome the punishment for his crime after its commission and does not implicate an ex post facto violation.

¶10 Poirier argues that the income assignment order somehow violated a rule that “a civil commitment cannot be [the basis] of a criminal punishment.” This argument lacks any adequate explanation or citation to appropriate supportive legal authority, so we would first have to develop Poirier’s “civil commitment” argument for him before we could address it. This court cannot develop arguments for a party, and we therefore do not address that undeveloped argument. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶11 Finally, for the first time on appeal, Poirier argues that the income assignment order violated the constitutional prohibition against double jeopardy. That argument is also undeveloped, but additionally, Poirier did not raise it in the circuit court. “A fundamental appellate precept is that we ‘will not ... blindsides trial courts with reversals based on theories which did not originate in their forum.’” *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶11, 261 Wis. 2d 769, 661 N.W.2d 476 (citation omitted). Therefore, we generally will not consider issues raised for the first time on appeal. *See State v. Hayes*, 2004 WI 80, ¶21, 273 Wis. 2d 1, 681 N.W.2d 203. For that reason, we decline to address Poirier’s double jeopardy argument.

¶12 We therefore reject all of Poirier’s arguments and affirm the income assignment order.

*By the Court.*—Order affirmed.

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

