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**DISTRICT II**

September 16, 2020

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2019AP677-CR

State of Wisconsin v. LaShawn L. Long (L.C. #2008CF289)

Before Reilly, P.J., Gundrum and Davis, JJ.

LaShawn L. Long appeals pro se from an order denying his postconviction motion. He contends that the circuit court erred in ordering restitution. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup> We conclude that a question exists as to whether Long

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

received notice of the restitution claim and order. Accordingly, we reverse the order denying his postconviction motion and remand with directions.

In May 2008, Long was convicted following guilty pleas to two counts of armed robbery as a party to a crime. The circuit court ordered a term of probation to run consecutively to the sentence in a companion case.<sup>2</sup> The judgment of conviction stated that restitution was “TBD.”

In June 2008, the Wisconsin Department of Corrections (DOC) sent the circuit court a letter indicating that Long owed \$1069.87 in restitution. The court subsequently ordered restitution in that amount.

In September 2008, the Kenosha County District Attorney’s Office filed a form in the circuit court indicating that it had determined a new amount of restitution, which totaled \$1183.73. The court eventually ordered restitution in that amount.

Over ten years later, in January 2019, Long moved the circuit court to vacate the ordered restitution. Pointing to his prison trust account statement, Long noted that he was not required to pay restitution until years after he believed his conviction was final. The circuit court denied his motion. This appeal follows.

On appeal, Long renews his challenge to the ordered restitution. He complains that it came too late and violated his right to due process,<sup>3</sup> which is required when establishing restitution. *See State v. Pope*, 107 Wis. 2d 726, 730, 321 N.W.2d 359 (Ct. App. 1982).

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<sup>2</sup> The companion case was Kenosha County case No. 2008CF144.

Upon review of the briefs, we conclude that a question exists as to whether Long received notice of the restitution claim and order. On the one hand, the State observes that Long or his counsel was copied on the circuit court filings of the DOC and the Kenosha County District Attorney's Office. On the other hand, the circuit court appeared to conclude that no notice was actually given to Long in his companion case, which involved a similar claim.<sup>4</sup>

Because the circuit court did not reach this issue, and because we cannot resolve factual disputes, we reverse the order denying Long's postconviction motion and remand for a hearing on whether notice was given to Long. If the State can prove that notice was given, then Long's challenge will fail, as he had an opportunity to object and did not. If the State cannot prove that notice was given, then the circuit court must vacate the ordered restitution.

Upon the foregoing reasons,

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<sup>3</sup> Although Long did not raise the issue of due process in the circuit court, we may look past the forfeiture rule in an appropriate case. See *State v. Counihan*, 2020 WI 12, ¶27, 390 Wis. 2d 172, 938 N.W.2d 530. We choose to do so here.

<sup>4</sup> In Kenosha County case No. 2008CF144, the circuit court issued an order stating in relevant part:

Mr. Long's motion complains that at the time of sentence, the amount of restitution was left to be determined, and that he received no further information on that subject until nearly ten years later, when he received material from the Department of Corrections that the restitution had been fixed at an amount of more than \$2000. The district attorney was twice requested to respond but has not done so. The record appears to support Mr. Long's factual claims....

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There is no history in the record to indicate how that amount was determined, and whether notice was given to the defendant of the amount which was being claimed.

IT IS ORDERED that the order of the circuit court is summarily reversed and the cause is remanded with directions pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*