

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 25, 2007**

David R. Schanker  
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. 2006AP1968-CR**

Cir. Ct. No. 2004CF1336

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DAMIEN DONNELLE JONES,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Racine County:  
DENNIS J. BARRY, Judge. *Reversed.*

¶1 ANDERSON, J.<sup>1</sup> Damien Donnelle Jones pled guilty to one count of falsifying statements relating to voter registration as party to a crime, contrary

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

to WIS. STAT. §§ 12.13(3)(g) and 939.05. The basis for this charge was his poor supervision of deputy registrars. Poor supervision, however, is not a crime known to law. Accordingly, we reverse the judgment of conviction and remand so that Jones may withdraw his guilty plea.

### **Facts**

¶2 Jones worked for Acorn as a supervisor of deputy registrars. Acorn is a nationwide community activist organization with the objective of registering voters in minority communities. To achieve this objective, Acorn set up Project Vote through a private grant from American Families United. Project Vote is comprised of a group of deputy registrars. To become deputy registrars, the members of Project Vote attended a one hour program at the city of Racine clerk's office. Once named deputy registrars, the members of Project Vote went out and registered voters. When registering a voter, the deputy registrars were to sign the registration forms, verifying that they personally received the information from the voter and personally interviewed the voter. American Families United provided Acorn with additional funds based on the number of voter registrations they received. From these additional funds, Acorn paid the deputy registrars for every registration they received with a bonus for every registration over their quota.

¶3 As a supervisor of Project Vote, Jones was in a position to enforce the rules for ensuring accurate and complete voter registration forms. He was also in a position to report rules violations. Jones himself was not a deputy registrar.

¶4 The clerk's office began to receive registrations for people who were already on the rolls. Also, questions were raised regarding handwriting on the registration forms. As a result, the State became involved in an investigation. This investigation uncovered fraud. In particular, one deputy registrar simply

copied names out of a phone book, while another deputy left a stack of forms in Racine asking others to hand them out, returning just to sign them without individual verification.

¶5 Following the investigation, the State filed an eight-count information against Jones, charging him with election fraud and misconduct in public office. The State alleged that Jones took part in the fraudulent voter registration and facilitated, if not encouraged, this conduct. Further investigation, however, did not bear out these allegations. The parties entered into a plea agreement whereby Jones agreed to plead guilty to the single violation of WIS. STAT. § 12.13(3)(g) as party to a crime.

¶6 At the plea hearing, the State acknowledged “[i]n further investigation, we find that Mr. Jones himself was not ... involved in some sort of larger scheme to actively defraud individuals from voting.” The State admitted that “[h]e himself did not manipulate any voter registration certificates. Mr. Jones here was the supervisor of the individuals who ... did it.” The State acknowledged that “the party to the crime is based upon his failure to appropriately supervise his individuals and allow[ing] them ... to file false applications and ... not having a proper screening process.” Finally, the state admitted that it did not believe or have evidence that “Mr. Jones himself fraudulently manipulated the voter registration list or himself did anything.”

¶7 The State recommended a fine and an order restricting Jones from engaging in any campaigning for one year with the condition that if he engaged in any violation of the election laws or campaigned within one year, the State would reinstate three counts of election fraud. However, the trial judge sentenced Jones to two years probation and, as conditions of the probation, Jones was not to work

in any job relating to elections or election activities, Jones was to acquire full-time employment away from the political arena, Jones was required to pay \$500 to the Racine Crimestoppers organization and Jones was required to serve ninety days in the Racine County Jail.

### Discussion

¶8 Jones challenges the judgment of conviction on several grounds. We choose not to address the merits of his arguments. Instead, we raise sua sponte a question Jones alluded to in his brief—namely, whether the conviction should be reversed and the cause remanded for plea withdrawal because Jones pled guilty to a crime unknown to law. We conclude that WIS. STAT. §§ 12.13(3)(g) and 939.05, when read together, do not criminalize poor supervision of voter registration.

¶9 This case concerns the interpretation and application of WIS. STAT. §§ 12.13(3)(g) and 939.05. Application and interpretation of a statute is a question of law. *State v. Moran*, 2005 WI 115, ¶26, 284 Wis. 2d 24, 700 N.W.2d 884. It is well established that “the court of appeals has the authority to raise a question of law sua sponte.” *Bartus v. DHSS*, 176 Wis. 2d 1063, 1071, 501 N.W.2d 419 (1993).

¶10 Further, we have the authority to reverse a conviction in the interest of justice if it appears from the record that there has been a miscarriage of justice. *See* WIS. STAT. § 752.35; *State v. Maloney*, 2006 WI 15, ¶16, 288 Wis. 2d 551, 709 N.W.2d 436. A miscarriage of justice occurs where “the defendant should not have been found guilty and ... justice demands the defendant be given another trial.” *State v. Ward*, 228 Wis. 2d 301, 306, 596 N.W.2d 887 (Ct. App. 1999). We may exercise this power of discretionary reversal even if the defendant fails to request this action. *Maloney*, 288 Wis. 2d 551, ¶16.

¶11 WISCONSIN STAT. § 12.13(3)(g) makes it crime for any person to “[f]alsify any statement relating to voter registration.” Pursuant to WIS. STAT. § 939.05, a person is a party to a crime when he or she commits the crime directly, “[i]ntentionally aids and abets the commission of it,” or “[i]s a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it.”

¶12 A person is an aider and abettor if he or she knows or believes that another person is committing, or intends to commit, a crime and knowingly either renders aid to that person or stands by, ready and willing to render aid if needed, and the person who directly commits the crime knows of his or her willingness to help. WIS JI—Criminal 401. A person is a member of a conspiracy if, with the intent that a crime be committed, the person agrees with or joins with another for the purpose of committing that crime. *Id.*

¶13 There is no evidence that Jones intentionally aided or abetted others in falsifying statements relating to voter registration or that he conspired with the deputy registrars with the intent to falsify voter registration. The State admitted that there was no belief or evidence that “Mr. Jones himself fraudulently manipulated the voter registration list or himself did anything.” The State conceded that Jones was “not involved in some sort of larger scheme to actively defraud individuals from voting.” Finally, the State admitted that Jones’ guilt was “based upon his failure to appropriately supervise” deputy registrars who did falsify documents relating to voter registration. WISCONSIN STAT. §§ 12.13(3)(g) and 939.05 do not prohibit this type of insufficient oversight. Therefore, Jones pled guilty to a nonexistent crime.

¶14 We recognize the trial court's concern about voter fraud and we respect the integrity of the electoral process. However, one cannot be convicted of a nonexistent crime. *See State v. Briggs*, 218 Wis. 2d 61, 68-69, 579 N.W.2d 783 (Ct. App. 1998). Accordingly, we reverse the judgment of conviction and remand the matter to the trial court so that Jones may withdraw his guilty plea.<sup>2</sup>

*By the Court.*—Judgment reversed.

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

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<sup>2</sup> On remand, we suggest to Jones that he seek the assistance of counsel.

