COURT OF APPEALS
DECISION
DATED AND FILED

June 28, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-3550

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

VILLAGE OF SHOREWOOD HILLS,

PLAINTIFF-RESPONDENT,

v.

KENNETH R. MCGREW,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Kenneth R. McGrew appeals his municipal ordinance speeding conviction. He contends that the trial court erred in denying his motion for a twelve-person jury trial. The trial court's judgment is affirmed.

FACTS

¶2 McGrew was tried and convicted in the Village of Shorewood Hills Municipal Court on February 23, 2000, for a speeding citation issued to him on December 5, 1999. McGrew appealed the judgment to the Dane County Circuit Court and requested a new trial with a jury. On April 19, 2000, McGrew requested a jury of twelve persons, instead of six as provided for in forfeiture cases in WIS. STAT. § 756.06(2)(c). On June 22, 2000, the circuit court denied the motion.

¶3 On September 27, 2000, the case was tried to a six-member jury, resulting in a guilty verdict of speed in excess of the posted limit. McGrew appeals the judgment of the circuit court.

DISCUSSION

¶4 McGrew argues that article I, section 5 of the Wisconsin Constitution provides a constitutional right to a jury trial for municipal ordinance speeding violations. He asserts that because the constitutional right to a jury trial carries with it the right to a twelve-person jury, WIS. STAT. § 756.06(2)(c) is unconstitutional because that statute only provides for a six-person jury in ordinance violation cases. McGrew's claim is completely meritless.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶5 McGrew's case involves a municipal ordinance carrying a possible forfeiture for violators. "[I]t is well recognized that persons charged with violating municipal ordinances do not have a constitutional right to a jury trial." ***Village of Oregon v. Waldofsky***, 177 Wis. 2d 412, 420, 501 N.W.2d 912 (Ct. App. 1993). The right to a jury trial in municipal ordinance cases is statutory. ***Id***.

¶6 McGrew seems to argue that ***Waldofsky*** and other court of appeals decisions holding that there is no constitutional right to a jury trial in ordinance violation cases are contrary to supreme court decisions in ***State v. Hansford***, 219 Wis. 2d 226, 580 N.W.2d 171 (1998); ***City of Oshkosh v. Lloyd***, 255 Wis. 601, 39 N.W.2d 772 (1949); ***Ogden v. City of Madison***, 111 Wis. 413, 87 N.W. 568 (1901); and ***Norval v. Rice***, 2 Wis. 17 (1853). However, McGrew's arguments are based on misreadings of these cases. None of these cases, either separately or in combination, hold that persons charged with ordinance violations have a constitutional right to a jury trial. We are bound by ***Waldofsky***. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (the court of appeals is bound by its prior published decisions).

¶7 Therefore, McGrew had no constitutional right to a jury trial. His statutory right is found in WIS. STAT. § 756.06(2)(c), which provides: "A jury in a case involving an offense for which a forfeiture may be imposed or in an inquest under s. 979.05 shall consist of 6 persons." Since McGrew had a six-person jury, he has nothing to complain about in this regard.

¶8 McGrew also argues that WIS. STAT. § 756.06(2)(c) is unconstitutionally vague. In particular, he seems to assert that the word "forfeiture" is vague. He says that a "forfeiture is a civil award for damages" and, therefore, the term can be used to describe all civil cases. His point, so far as we

can tell, is that because the word "forfeiture" is used in § 756.06(2)(c), the statute is vague in that it might be applied to all civil cases.

¶9 It is apparent that McGrew does not understand the vagueness doctrine. Unconstitutional vagueness is an issue when a law arguably does not give citizens adequate notice of a duty or of prohibited conduct. *See generally* ***City of Milwaukee v. K.F.***, 145 Wis. 2d 24, 32-33, 426 N.W.2d 329 (1988). Notice in this sense is not an issue in this case.

¶10 Moreover, the statute in question, WIS. STAT. § 756.06(2)(c), unambiguously applies to ordinance violation cases like this where alleged violators are subject to forfeitures. To the extent McGrew is arguing that the statute might cover more types of civil cases, his argument is beside the point.

By the Court.—Judgment affirmed.

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