

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2002

Cornelia G. Clark
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. 01-1492
STATE OF WISCONSIN

Cir. Ct. No. 00-TR-3768

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF BARABOO,

PLAINTIFF-RESPONDENT,

v.

GARY G. RANUM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
JAMES MILLER, Judge. *Affirmed.*

¶1 VERGERONT, P.J.¹ Gary Ranum appeals a judgment of conviction for driving while under the influence of an intoxicant, first offense. He contends the trial court erroneously exercised its discretion in denying his request

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

for a continuance of the trial so that he could obtain counsel. We conclude the trial court did not erroneously exercise its discretion and therefore affirm.

BACKGROUND

¶2 Ranum was given a citation on June 14, 2000, for operating while under the influence of an intoxicant. He appeared on July 7 and entered a plea of not guilty. Although the case was scheduled for a pretrial conference on September 15, 2000, the assigned judge disqualified himself, and the case was reassigned on October 9, 2000. A telephone status/scheduling conference was scheduled for November 13, 2000, and Ranum appeared unrepresented. On that date, a one-day trial was scheduled for March 5, 2001.

¶3 Ranum appeared unrepresented on the date of trial. When the court asked him if he was prepared to proceed, he answered “[a]s best I can without an attorney.” The court responded by saying that the matter had been set for trial since November 13, and that the court understood that Ranum had called the court late the preceding Friday afternoon, March 2. The court had attempted to locate the city attorney to avoid having an ex parte communication with Ranum, but the city attorney could not be located. The court had been informed by the clerk that Ranum was going to request a continuance because he did not have an attorney. The court stated it saw no reason why Ranum could not have retained an attorney over the past three and one-half months.

¶4 Ranum advised the court he had an attorney until the preceding Wednesday. On Wednesday night his attorney told him for the first time she was unable to attend the trial. She left for California Thursday morning. Ranum went to Madison on Thursday and Friday to try and find an attorney, and he talked to

several, including Attorney Chris Kelly, but none were available on Monday, March 5.

¶5 The prosecutor stated that he had never received a notice of appearance from an attorney, which he considered very unusual: when an attorney appears on behalf of a defendant in matters such as this, the standard practice is to file a notice of appearance with the court and with the prosecutor.

¶6 The court decided that the case was going to be tried that day. It explained that there had been no notice, that if Ranum had retained an attorney and the attorney had a conflict on that day, it was the attorney's obligation to contact the court. The court also stated that on sufficient notice, the court would have considered a motion to continue the trial, but not when the request was within twenty-four hours (counting working days) of the day of trial.

STANDARD OF REVIEW

¶7 Whether to grant a continuance is within the trial court's discretion. *Robertson-Ryan & Assoc., Inc. v. Pohlhammer*, 112 Wis. 2d 583, 587, 334 N.W.2d 246 (1983). We affirm a trial court's discretionary decision if the trial court examined the relevant facts, applied a proper reasonable standard, and using a demonstrative rational process reaches a conclusion that a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). If the trial court decision meets this standard, then we affirm even though another court, or this court, might have made a different decision. *Burkes v. Hales*, 165 Wis. 2d 585, 590, 478 N.W.2d 37 (Ct. App. 1991).

¶8 The factors the trial court is to consider when a defendant requests a continuance in order to substitute counsel are: (1) the length of the delay

requested; (2) whether the lead counsel has associates prepared to try the case in his or her absence; (3) whether other continuances have been requested and received; (4) the convenience or inconvenience to the parties, witnesses, and the court; (5) whether the delay seems to be for legitimate reasons; and (6) other relevant factors. *Phifer v. State*, 64 Wis. 2d 24, 31, 218 N.W.2d 354 (1974). The parties agree that this is the appropriate test here, and therefore we apply it. We note, however, that the second factor is not relevant since Ranum did not have counsel.

¶9 The court here considered Ranum's explanation for the requested delay and concluded he did not have legitimate reasons. The court could reasonably infer from the fact that no notice of retainer had been filed with the court, and that the attorney Ranum mentioned had informed him on Wednesday that she was leaving town and would not be able to appear Monday, that Ranum had not actually retained an attorney. Since the trial had been scheduled since November 13, the court could reasonably decide that Ranum had not made reasonable efforts to obtain representation. Moreover, at the time Ranum was asking for a continuance, he had not yet retained an attorney who could commit himself or herself to appearing at a particular date and time if the trial were continued; he was not asking for a delay of a particular length. Finally, it is reasonable to infer that a continuance requested on the morning of trial is an inconvenience to the other party, the other party's witnesses, and the court.

¶10 The only factor that weighed in favor of granting a continuance was that Ranum had not previously requested one. However, the court could properly decide that, even though Ranum had not requested a continuance previously, a request on the morning of trial for more time to obtain an attorney was not reasonable, in the absence of a showing of diligent efforts to obtain one.

By the Court.—Judgment affirmed.

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

