COURT OF APPEALS
DECISION
DATED AND FILED

April 6, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1999 **Cir. Ct. No. 2008CM2977**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL L. GENGLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: LINDA M. VAN DE WATER, Judge. *Affirmed*.

¶1 BROWN, C.J.[1] Michael L. Gengler appeals his convictions of failing to file a State of Wisconsin income tax return for the years 2005-2007. He

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

claims that the criminal complaint was improper, that he was denied his right to assistance of counsel and his right to a speedy trial, and that there was insufficient evidence of his guilt. We hold that the complaint was sufficient. As to the remaining issues, we note that Gengler has not provided any transcripts to support his claims, so we must assume that the record supports every fact essential to the trial court's findings. And bound as we are to that maxim, the failure largely dooms the remaining issues.

FACTS

¶2 The complaint in this case reveals the following: The Wisconsin Department of Revenue (DOR) initiated an investigation of Gengler after it received W-2 forms and wage and earning statements regarding Gengler. The forms reflected that Gengler received gross incomes of $88,988 and $89,649 in 2005 and 2006 respectively. As of August 19, 2008, no income tax returns for the years 2003-2006 were on record for him. In addition, the DOR obtained a 2004 uniform residential loan application with Citizen's Bank of Mukwonago, signed by Gengler. On that form, Gengler indicated his base monthly income was $5848.12. Officials from the DOR notified Gengler of his responsibility to file income tax returns for 2003-2006. In response, Gengler claimed that he did not have "income" as defined in the Internal Revenue Code and therefore was not required to file a state income tax return.

¶3 Gengler was originally accused of failing to file a State of Wisconsin income tax return for the years 2005 and 2006, in violation of WIS. STAT. § 71.83(2)(a)1. The complaint was later amended to include tax year 2007 as well. At a jury trial, Gengler was convicted on all counts. His postconviction motion was denied, and he appeals.

DISCUSSION

¶4 Gengler's first issue is that the State did not file a proper criminal complaint. He argues that the State merely filed an affidavit from the DOR, which failed to state facts sufficient to constitute a cause of action against him. In particular, he contends that it was the DOR agent who filed the complaint, not the district attorney, and that the agent's affidavit was wanting because it only reproduced the tax statute's verbiage and did not include facts applicable to him. He further alleges that the complaint failed to provide the required evidence that any suggested income thresholds were in place, which would have required him to file a tax return.

¶5 "The sufficiency of a complaint is a matter of law that we review de novo." ***State v. Barman***, 183 Wis. 2d 180, 201, 515 N.W.2d 493 (Ct. App. 1994), *citing* ***State v. Adams***, 152 Wis. 2d 68, 74, 447 N.W.2d 90 (Ct. App. 1989). A criminal complaint must contain essential facts constituting the offense charged and the possible penalty that may be imposed upon conviction. WIS. STAT. § 968.01. The complaint must be minimally adequate based on common sense. *See* ***State v. Blalock***, 150 Wis. 2d 688, 694, 442 N.W.2d 514 (Ct. App. 1989).

¶6 The trial court determined that the complaint and the amended complaint were proper, stating,

> The complaint was duly sworn on oath. The complaint was signed and filed by an assistant district attorney as prescribed by WIS. STAT. § 968.02(1). The complaint alleges multiple violations of WIS. STAT. § 71.83(2)(a)1. and alleges facts to support probable cause of the charges.

After independently reviewing the complaint, we agree with the trial court. The defendant was named, the crime and punishments were defined and facts

constituting the offense charged were presented. *See* WIS. STAT. § 968.01. Further, the DOR agent provided the affidavit which was the basis for the complaint. On the strength of this affidavit, made under oath, the assistant district attorney signed and filed it. The complaint is proper.

¶7 Before we discuss the remaining issues, we are compelled to briefly address the state of the appellate record. As we noted above, Gengler has not provided us with any transcripts. Our supreme court, in ***Austin v. Ford Motor Co.***, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979), addressed the proper appellate standard of review in cases where the appellant has provided no transcripts in the record. The ***Austin*** court stated that "[b]ecause neither party has furnished a transcript, we are obliged to accept the trial court's statement of facts as a verity." ***Id.*** at 634. "While the court can consider errors of law revealed in a trial court memorandum, the court will assume, in the absence of a transcript, that every fact essential to sustain the trial judge's exercise of discretion is supported by the record." ***Id.*** at 641. ***Austin*** guides our analysis of remaining issues in this appeal unless otherwise noted.

¶8 We now reach Gengler's second issue—that he was denied his right to assistance of counsel. The record does show the following: After Gengler was unsuccessful in finding private counsel, the court appointed counsel for him. Gengler then argued that his appointed counsel was not properly representing him and moved to have him withdrawn. Eventually, Gengler signed a waiver of his right to counsel, after which he proceeded pro se at trial. That much is in the record. But Gengler argues that he signed the waiver under duress in order to remove his then-appointed counsel, whom he did not want representing him any longer.

¶9 As stated above, without transcripts, this court is to assume that all of the trial court's determinations of fact are supported by the transcripts. *See* ***Austin***, 86 Wis. 2d at 634. The trial court found that Gengler had voluntarily released his counsel. It specifically found that Gengler was uncooperative with his appointed counsel and that Gengler had unequivocally waived his right to counsel. Although Gengler makes many claims about how he involuntarily gave up his right to assistance of counsel and, against his wishes, was coerced into proceeding pro se, these claims are merely factual allegations that he makes on appeal. There is no record to support these allegations. This is because he has not provided a transcript. We cannot accept his factual claims in a vacuum. There must be evidence of coercion for us to review. We have nothing to review. Therefore, we assume that the trial court's findings were supported by the missing transcripts. An appellate court will not overturn a trial court's findings of fact unless those findings are clearly erroneous. ***State v. Kennedy***, 2008 WI App 186, ¶11, 315 Wis. 2d 507, 517, 762 N.W.2d 412. No showing has been made of how the trial court's findings are clearly erroneous. We affirm the trial court's ruling.

¶10 Gengler's third issue is that he was denied his right to a speedy trial. His argument on this issue is two-fold. First, he argues that the State was at fault in the delay of prosecution, this violating his right to a speedy trial pursuant to WIS. STAT. § 971.10(1). The second argument is that he was denied his right to a speedy trial as guaranteed in the U.S. Constitution and the Wisconsin Constitution.

¶11 We begin our analysis with Gengler's statutory claim. Gengler argues the State violated WIS. STAT. § 971.10(1) by not bringing him to trial within sixty days. Because of this, Gengler believes he was entitled to a discharge or dismissal. Gengler points out that more than 300 days passed between his initial appearance and his trial. *See* § 971.10(1).

¶12 The remedy for a violation of WIS. STAT. § 971.10(1) is set forth within the statute. "Every defendant not tried in accordance with this section shall be discharged from custody but the obligations of the bond or other conditions of release of the defendant shall continue until modified or until the bond is released or the conditions removed." Sec. 971.10(4). Gengler was never in custody prior to the trial. Rather, he was on signature bond. Therefore, the statute provides Gengler no remedy because he was not in custody prior to the trial.

¶13 Gengler also argues that he was denied a speedy trial in violation of both the U.S. Constitution and Wisconsin Constitution. According to Gengler, throughout the time leading up to the trial, the court granted the State's requests for additional time on multiple occasions. Gengler argues that he did not cause any of these delays. Because of these delays, Gengler believes his conviction should be vacated.

¶14 In ***Day v. State***, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (Wis. 1973), the Court recognized that courts should conduct a balancing test, weighing the conduct of both the prosecution and defense, to determine whether the defendant's right to a speedy trial was violated. Balancing test factors include "the length of delay, the reason for the delay, the defendant's assertion of the right and the prejudice to the defendant." ***Id***. In this case, the trial court stated in its order denying postconviction relief that the delays were primarily caused by the multiple motions filed by Gengler and that "any delay that may be attributed to the State is not afforded significant weight as to become presumptively prejudicial." Once again, without any transcripts we must assume that they would support the trial court's account. *See* ***Austin***, 86 Wis. 2d at 634. Gengler's claim therefore fails.

¶15 We break Gengler's last issue into two parts: whether the evidence is insufficient as a matter of law and whether it is insufficient as a matter of fact. We will deal with these in turn. Gengler contends that, as a condition precedent to a complaint that he owed state income taxes, the State must first prove that he filed *federal* income tax returns during the taxable years 2005, 2006 and 2007. The rationale for his argument appears to be that because WIS. STAT. § 71.01(13) uses the term "federal adjusted gross income" to define "Wisconsin adjusted gross income," there must be proof of a federal filing showing adjusted gross income. But this statute, on its face, simply does not contain any such requirement. He cites no authority for this evidentiary claim. We will not address propositions that are unsupported by legal authority. ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980). We conclude that, in the absence of authority to the contrary, a factfinder could infer that, if he earned income in a taxable year, this income would be subject to federal taxes and that the State's figures reflected the federal adjusted gross income.

¶16 As to the rest of Gengler's sufficiency of the evidence claim, because we do not have the transcript of the jury trial, we must assume that there existed credible evidence to support the verdict. *See* ***Austin***, 86 Wis. 2d at 634. This is especially so because the trial court already denied a postconviction sufficiency of the evidence claim by Gengler. *See* ***State v. Gladney***, 120 Wis. 2d 486, 490, 355 N.W.2d 547 (Ct. App. 1984) ("The evidence must be viewed in the light most favorable to the verdict, and if there is any credible evidence on which the jury could have based its decision we must affirm, particularly where the verdict has the trial court's approval."). Post-trial, the trial court stated that "the State produced evidence to establish that the defendant was a Wisconsin resident, that he earned income above the threshold level required by statute and that he

failed to pay Wisconsin income tax." We accept the trial court's observations because, once again, without the transcripts, we cannot say otherwise.

By the Court.—Judgment and order affirmed.

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