COURT OF APPEALS
DECISION
DATED AND RELEASED

May 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1563

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

HERBERT L. FOBBS, JR.,

Petitioner-Respondent,

v.

PHILIP ARREOLA,
STANLEY OLSEN,
MICHAEL R. STRAMPE and
MILWAUKEE POLICE DEPARTMENT,

Respondents-Appellants.

APPEAL from an order of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Affirmed*.

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Philip Arreola, Chief of the Milwaukee Police Department (MPD) appeals from an order granting Herbert L. Fobbs, Jr.'s petition for a writ of mandamus after Fobbs's open records request for certain police reports was denied.

Arreola claims the trial court erred as a matter of law in applying §§ 19.31 to 19.39, STATS., to the undisputed facts. Because the trial court did not erroneously exercise its discretion in balancing the interest of the public to be informed on public matters against the harm to a victim's reputation which would likely result from permitting inspection, we affirm.

I. BACKGROUND

On May 4, 1994, MPD received an open records request from Fobbs requesting copies of police reports filed by a Milwaukee police detective relating to his arrest and conviction for first-degree sexual assault. Fobbs claimed that 186 pages of reports existed in the police file based on a notation made on the back side of the criminal complaint. MPD denied the request on the basis that it does not release records relating to a sexual assault without a notarized waiver from the victim. In response, Fobbs filed a petition for a writ of mandamus seeking an order directing Arreola, as the record custodian for MPD, to provide him with copies of the requested records. At the mandamus hearing, Arreola moved to quash Fobbs's petition. The trial court denied the motion and ordered Arreola to provide Fobbs with copies of the police reports contained in the police file. Arreola now appeals.

II. STANDARD OF REVIEW

We review whether a trial court erred in granting a writ of mandamus under the erroneous exercise of discretion standard. ***Morrissette v. De Zonia***, 63 Wis.2d 429, 434, 217 N.W.2d 377, 380 (1974). Thus, we shall not reverse the trial court's order if it "examined the relevant facts, applied a proper standard of law, and using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Appleton Post-Crescent v. Janssen***, 149 Wis.2d 294, 302-03, 441 N.W.2d 255, 258 (Ct. App. 1989).

In a mandamus action to gain access to public records covered under §§ 19.32 to 19.37, STATS., when the custodian of such records specifically states reasons for refusing the request, the trial court should apply a balancing test of whether or not the harm likely to result to the public interest by permitting the inspection outweighs the benefit to be gained by granting the inspection. ***State ex rel. Youmans v. Owens***, 28 Wis.2d 672, 681-82, 137 N.W.2d 470, 474-75 (1965), *modified*, 28 Wis.2d 672, 139 N.W.2d 241 (1966).

III. ANALYSIS

In the instant case, the request for documents allegedly involved 186 pages of police reports. The trial court conducted a telephonic hearing with Fobbs, an assistant city attorney, and Arreola's representative, police officer Milton Reich, who directed the Open Records Section.[1] The transcript of the hearing demonstrates the following. The file Fobbs requested contained only seventy-eight pages of police reports. Officer Reich testified that when he receives a request for documents relating to a sexual assault, the current policy is to deny the request whether the case is open, pending or closed unless the victim has signed a waiver. In contrast, Reich indicated that if the request involved a burglary case, the request would be granted if the case were closed.

The trial court determined that Fobbs's case had been tried to a jury. The jury found him guilty and he was now serving his sentence. The city attorney explained that the reason for the policy was to prevent emotional distress and the invasion of a victim's right to privacy. The trial court stated, however, that the policy as applied to Fobbs appeared to be in conflict with the Open Records Law of Chapter 19 of the Wisconsin Statutes. The trial court reasoned that the denial of Fobbs's request was particularly suspect because the reports were undoubtedly provided to Fobbs's counsel in the criminal case, the victim's name was contained in the criminal complaint, and the victim had testified against Fobbs in open court. Based on these factors, the trial court questioned whether any legitimate concerns about confidentiality actually existed. The trial court concluded that no satisfactory explanation or legal justification to deny Fobbs's request was given in light of the aforementioned factors.

From this review of the record, it is manifest from the dictates of ***Youmans*** that the trial court balanced the interests of MPD in keeping the seventy-eight pages of reports confidential verses the interests of the public to have access to public records. In engaging in this exercise, the trial court

[1] Fobbs was incarcerated at time of the hearing, serving a sentence for the sexual assault conviction that he wanted to appeal. The documents he requested allegedly would be used for the purpose of effectuating his appeal.

reached a very rational conclusion. The trial court did not erroneously exercise its discretion. We affirm its order.

By the Court. – Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.