



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

May 12, 2026

To:

Hon. Rebecca A. Kiefer
Circuit Court Judge
Electronic Notice

John Blimling
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

David Malkus
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP2405-CR State of Wisconsin v. Mark Anthony Dabney
(L.C. # 2022CF1771)

Before Donald, C.J., Colón, P.J., and Geenen, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mark Anthony Dabney appeals from an order of the circuit court dismissing charges in his criminal case without prejudice. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ Dabney was charged with four counts: substantial battery, strangulation and suffocation, false imprisonment, and disorderly conduct. Dabney asserted his right to prompt disposition under Wisconsin's Intrastate Detainer Act, WIS. STAT. § 971.11, but the deadline for his trial was not met. The circuit court concluded that Dabney's right to prompt

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

disposition was violated, and after considering the relevant factors, the court dismissed the case without prejudice. The State refiled the charges, Dabney pleaded guilty to two of them, and the other two were dismissed and read in.

On appeal, Dabney argues that the circuit court should have dismissed his case with prejudice because the court found that the State violated his right to prompt disposition without good cause. We reject Dabney's arguments and conclude that he forfeited his right to challenge the circuit court's dismissal order by pleading guilty, and that the circuit court did not erroneously exercise its discretion when it chose to dismiss the original charges without prejudice. Accordingly, we affirm.

On May 6, 2022, the State charged Dabney with substantial battery, strangulation and suffocation, false imprisonment, and disorderly conduct after police received a call informing them that a woman had been "beaten badly by her boyfriend[.]" On October 7, 2022, Dabney requested prompt disposition of his case under WIS. STAT. § 971.11, and on October 19, 2022, the circuit court's clerk gave notice of Dabney's request to the State. Dabney filed pro se motions to dismiss on January 19, 2023 and March 9, 2023. On April 11, 2023, Dabney refiled his March 9 motion, including a letter asserting that his prior motion was "being ignored."

At a pretrial hearing on May 22, 2023, the prosecutor stated that she had not been assigned to Dabney's case when the prompt disposition request was filed in October of 2022, and she had no record of Dabney's request in her case file. The prosecutor assigned to the case in October confirmed that he had received the request on October 19, 2022, but he did not provide any explanation as to why the request was either ignored or misplaced. The circuit court asked the parties for input on how to proceed, and it scheduled a hearing for the following morning.

On May 23, 2023, the circuit court concluded that Dabney’s statutory right to prompt disposition was violated, and after considering the relevant factors, it dismissed all four charges without prejudice. The same day that the circuit court dismissed the charges without prejudice, the State refiled them. On September 26, 2023, Dabney pleaded guilty to substantial battery and disorderly conduct, while the strangulation and false imprisonment charges were dismissed and read in.

Dabney appeals from the circuit court’s order dismissing the original charges without prejudice. On appeal, the State argues that by pleading guilty in the refiled case, Dabney waived his right to challenge the circuit court’s dismissal order. We agree with the State.

With few exceptions not applicable here, a guilty plea “waives all nonjurisdictional defects, including constitutional claims.”² *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (citation modified). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.” *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). A guilty plea “foreclose[s] direct inquiry into the merits of claimed antecedent constitutional violations[.]” *Id.* at 266. “Once the defendant chooses to bypass the orderly procedure for litigating his constitutional claims in order to take the benefits, if any, of a plea of guilty, the State acquires a legitimate expectation of finality in the conviction thereby obtained.” *Lefkowitz v. Newsome*, 420 U.S. 283, 289 (1975). Whether Dabney waived his right to

² Although the guilty-plea-waiver rule actually describes the concept of forfeiture rather than waiver, we use “waiver” throughout this opinion so as to more accurately track the nomenclature of the relevant case law. See *State v. Kelty*, 2006 WI 101, ¶18 n. 11, 294 Wis. 2d 62, 716 N.W.2d 886.

challenge the circuit court's dismissal order by pleading guilty is a question of law that we review independently. *Kelty*, 294 Wis. 2d 62, ¶13.

We have previously applied the guilty plea waiver rule to claims arising under WIS. STAT. § 971.11. For example, in *State v. Asmus*, 2010 WI App 48, ¶2, 324 Wis. 2d 427, 782 N.W.2d 435, the State charged Asmus with eight counts of identity theft and one count of misdemeanor theft, all as a repeater. Asmus moved to dismiss the charges, claiming that she had issued a prompt disposition request under § 971.11 more than 120 days earlier. *Asmus*, 324 Wis. 2d 427, ¶2. The circuit court denied the motion, concluding that the prompt disposition request was defective. *Id.* Asmus then pleaded guilty to two counts of identity theft without any penalty enhancers, and the remaining charges were dismissed. *Id.* On appeal, Asmus argued that the circuit court erred when it concluded that her prompt disposition request was defective. We rejected her argument, holding that her guilty pleas waived any claims that she had arising under § 971.11. *Asmus*, 324 Wis. 2d 427, ¶6.

The same is true here. Dabney claims that he is entitled to greater relief under WIS. STAT. § 971.11 than he received, but by pleading guilty in the refiled case, that claim is waived. The only conceivable distinction between the instant case and *Asmus* is that the partial relief the circuit court granted here resulted in the matter being carried forward under a different case number when the State refiled the same charges. We agree with the State that this is a distinction without a difference, and Dabney provides no authority to the contrary. Indeed, Dabney's situation fits squarely within the reasoning underlying the guilty plea waiver rule. A guilty plea "is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case. In most cases, factual guilt is a sufficient basis for the State's imposition of punishment." *Menna v. New York*, 423 U.S. 61, 62 n.2 (1975). "A

guilty plea, therefore, simply renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.” *Id.* Accordingly, we conclude that Dabney waived his right to challenge the circuit court’s dismissal order when he pleaded guilty to the refiled charges.

However, “[l]ike the general rule of waiver, the guilty plea waiver rule is a rule of administration and does not involve the court’s power to address the issues raised.” *Kelty*, 294 Wis. 2d 62, ¶18. In the instant case, both Dabney and the State request that we reach the merits of Dabney’s argument. Consistent with the request of both parties, we reach the merits of Dabney’s argument and conclude that the circuit court did not erroneously exercise its discretion by choosing to dismiss the original charges without prejudice. *See State v. Davis*, 2001 WI 136, ¶¶27-29, 248 Wis. 2d 986, 637 N.W.2d 62 (explaining that a circuit court’s decision to grant dismissal with or without prejudice to remedy a violation of WIS. STAT. § 971.11 is discretionary).

Dabney argues that dismissal with prejudice is required under WIS. STAT. § 971.11 when there is no good cause for the State’s violation of the statute. Dabney observes that the legislature intended violations of § 971.11 to result in some detriment to the State and benefit to the accused, relying substantially on the following statement in *State v. Davis*, 248 Wis. 2d 986, ¶17:

The detriment/benefit objective can be achieved in WIS. STAT. § 971.11(7) by allowing a circuit court to dismiss a criminal case with prejudice when no good cause is shown for the State’s failure to comply with the 120-day time period and to dismiss a criminal case without prejudice when good cause is shown for doing so.

See also *State v. Butler*, 2014 WI App 4, ¶6, 352 Wis. 2d 484, 844 N.W.2d 392 (quoting *Davis*). On its face, this statement from *Davis* does not support Dabney's argument that dismissal with prejudice is *required* when the circuit court determines that the State violated § 971.11 without good cause, but it *allows* such a result. Nowhere does *Davis* state or imply that a circuit court loses discretion upon finding that the statute was violated without good cause and is bound to dismiss the case with prejudice under those circumstances in order to further the remedial goals of § 971.11. Indeed, *Davis* makes clear that dismissal without prejudice also furthers the objectives set forth in § 971.11:

[D]ismissal of a criminal case without prejudice under [§] 971.11(7) also penalizes the State by forcing the State to begin the case again and repeat various proceedings, such as the preliminary hearing. On the other hand, an accused may or may not benefit from a dismissal of a criminal case without prejudice. Nonetheless, the objectives set forth in § 971.11 are furthered, and thus the public interest is protected.

Davis, 248 Wis. 2d 986, ¶19.

Contrary to Dabney's argument, the court in *Davis* explained that, when exercising its discretion to dismiss with or without prejudice under WIS. STAT. § 971.11, the circuit court should consider the following factors:

[T]he reasons for and the length of the delay in bringing the criminal case on for trial; whether the nature of the case makes it unreasonable to expect adequate preparation within the statutory time period; an accused's conduct contributing to the delay; an accused's waiver of the statutory right to prompt disposition; the harm to an accused resulting from the delay, such as anxiety and concern; the effect of the delay on an accused's legal defenses; the effect of the delay on the programs and movement within the institutions available to an accused; the effect of the delay on the orderly rehabilitation process of an accused within the Department of Corrections; the effect of the delay on an accused's concurrent sentencing possibilities; the effect of the delay on an accused's possible transfer to a less secure facility; the effect of the delay on

an accused's opportunity for parole; the effect of the delay on the transfer of the accused to another institution; the effect of the delay and dismissal on the public interest in the prompt prosecution of crime; and the effect of the delay and dismissal on the victim.

Davis, 248 Wis. 2d 986, ¶29 (footnote omitted). Under *Davis*, whether good cause for the statutory violation exists is but one (albeit, an important) factor for the circuit court to consider when it determines, in the exercise of its discretion, whether it should dismiss a criminal case with or without prejudice as a remedy for a violation of § 971.11. *Davis*, 248 Wis. 2d 986, ¶29 (instructing courts to consider “the reasons for ... the delay in bringing the criminal case on for trial”).

In the instant case, the circuit court correctly identified *Davis* as the proper controlling authority, and it thoughtfully weighed the relevant considerations, including the reason for the delay, the effect of the delay on Dabney's defense, and the effect dismissal would have on the victim. After carefully and thoroughly considering all relevant factors and giving particular weight to the effect dismissal with prejudice would have on the victim, the circuit court concluded that dismissal without prejudice was the appropriate remedy.

Dabney's contrary arguments amount to a wish that the circuit court had weighed the *Davis* factors differently, but we must affirm discretionary decisions where the circuit court correctly applies accepted legal standards to the facts of record and uses a rational process to reach a reasonable conclusion. *State v. Gary M.B.*, 2004 WI 33, ¶19, 270 Wis. 2d 62, 676 N.W.2d 475. That is precisely what the circuit court did here. The record demonstrates that the

circuit court applied the correct standard of law to the facts to arrive at a conclusion a reasonable judge would reach.³

Accordingly, for the foregoing reasons, we conclude that Dabney waived his right to challenge the circuit court's order dismissing the original charges without prejudice. Dabney's waiver notwithstanding, we conclude that the circuit court did not erroneously exercise its discretion when it decided to dismiss the original charges without prejudice.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

³ Dabney also suggests that the similarity between the Intrastate Detainer Act, WIS. STAT. § 971.11, and the Interstate Detainer Act, WIS. STAT. § 976.05, is meaningful. Dabney argues that because the Interstate Detainer Act mandates dismissal with prejudice and the two statutes share an "identical intent," we should construe § 971.11 as mandating dismissal with prejudice when no good cause for the violation is shown. However, our supreme court rejected a similar line of argument from the State in *State v. Davis*, 2001 WI 136, ¶¶23-24, 248 Wis. 2d 986, 637 N.W.2d 62:

The State argues that the phrase "shall be dismissed" in the *intrastate* detainer statute means dismissal without prejudice rather than dismissal with prejudice. Were it otherwise, the State argues, two different phrases, "shall be dismissed" and dismissed "with prejudice," in these two related statutes would be given the same meaning, and the words "with prejudice" in the *interstate* detainer statute would be superfluous.

We are not convinced by the State's reasoning. The phrase "with prejudice" in the *Interstate* Detainer Act was clearly intended to ensure that dismissals under that act were with prejudice. The phrase "with prejudice" will not be superfluous regardless of how the phrase "shall be dismissed" in WIS. STAT. § 971.11(7) is interpreted. Neither the language nor the history of the two statutes makes it clear, as the State contends, that the legislature intended a dismissal of a criminal case under the two statutes to result in different outcomes.

In other words, the dictates of the Interstate Detainer Act offer little value to the analysis of the Intrastate Detainer Act when it comes to the issue of remedy.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals