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DISTRICT IV

September 17, 2026

To:

Hon. Diane Schlipper
Circuit Court Judge
Electronic Notice

Kali Halen Zettle
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Melvin D. Graham-Jackson
Electronic Notice

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

2025AP976-CR

State of Wisconsin v. Melvin D. Graham-Jackson
(L.C. # 2024CM628)

Before Ziegler, J.¹

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).

Melvin Graham-Jackson appeals an order dismissing the criminal charges filed against him in this case without prejudice. Based on my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). Because I conclude that the circuit court did not erroneously exercise its discretion when it reviewed the circuit court commissioner's order and in effect dismissed the charges, I affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

In March 2024, the State filed a criminal complaint charging Graham-Jackson with disorderly conduct and misdemeanor battery, both as acts of domestic abuse (“this case”). The circuit court commissioner entered not guilty pleas on behalf of Graham-Jackson at the initial appearance. On May 6, 2024, Graham-Jackson appeared before a different commissioner, who, on the State’s motion, dismissed the charges without prejudice. The dismissal was based on Graham-Jackson’s initial appearance in a new case (“the new case”) that included the charges originally filed in this case.

In February 2025, Graham-Jackson filed three motions, titled “Motion to Reconsider or Reopen And Motion to clarify the dismissal,” “Motion to Unjoin Cases, Challenge Commissioner’s Dismissal, and Request Transcripts,” and “Motion to Reopen Case Pursuant to WIS. STAT. § 806.07 & Constitutional Right to Self-Representation.” The circuit court held a hearing in May 2025 on Graham-Jackson’s motions. At the hearing, the State explained that the charges that were dismissed in this case had been refiled in the new case. The court observed that it “happens all the time” that cases get dismissed without prejudice on the State’s motion, and under those circumstances, the State is free to “refile the same case.” Here, the court observed that this case had been dismissed and was closed.

After conducting a waiver of counsel colloquy, the circuit court found that Graham-Jackson was competent to proceed and that he knowingly and voluntarily waived his right to counsel for this case only. The court then allowed Graham-Jackson to present argument. Graham-Jackson argued that he “d[id]n’t see any lawful matter ... of why [the case] was dismissed,” that procedural protections such as notice were not provided, that his right to be free from double jeopardy was violated, and that the circuit court commissioner did not have authority to dismiss the charges. The State argued in favor of dismissal, asserting that Graham-

Jackson was not prejudiced by the dismissal and arguing that joining the charges that were dismissed in this case with additional charges in the new case “makes everything easier, [and] makes ... a trial down the road simpler.” Graham-Jackson also made arguments against the joinder of the charges in the new case, and the court explained that if Graham-Jackson was concerned with the joinder, he could file a motion in the new case.

At the close of the hearing, the circuit court stated that it was denying the motion to reopen “and, essentially, re-dismiss[ing] [the case].” The court explained that if it did not dismiss the charges in this case, Graham-Jackson “would have the two cases that are charging essentially the same things[, and] [w]e can’t have that.” The court issued a written decision and order denying the motion to reopen this case. Graham-Jackson appeals.²

On appeal, Graham-Jackson argues that the circuit court commissioner lacked authority to dismiss the charges in this case. For purposes of this appeal, I assume without deciding that this is correct. However, there is no dispute that the circuit court had authority to dismiss the charges, and I conclude that the circuit court’s statement that it was essentially re-dismissing the case and its written order denying Graham-Jackson’s motion to reopen constituted a dismissal of

² The State’s response brief does not comply with WIS. STAT. RULE 809.19(8)(bm), which addresses the pagination of appellate briefs. See RULE 809.19(8)(bm) (providing that, when paginating briefs, parties should use “Arabic numerals with sequential numbering starting at ‘1’ on the cover”). As our supreme court explained when it amended the rule in 2021, the pagination requirement ensures that the numbers on each page of the brief “will match ... the page header applied by the eFiling system, avoiding the confusion of having two different page numbers” on every page of an electronically filed brief. S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021).

Graham-Jackson’s appendix includes some documents that are not included in the record on appeal. Those documents are not properly before this court and will not be considered. See *State v. Kuhn*, 178 Wis. 2d 428, 439, 504 N.W.2d 405 (Ct. App. 1993) (“[I am] limited by the record before [me] and cannot consider the extraneous material included in [the] appendix.”).

the charges without prejudice. *Cf. Pasch v. DOR*, 58 Wis. 2d 346, 356, 206 N.W.2d 157 (1973) (explaining that the title or form of the circuit court’s order does not determine its legal effect; what matters is the substance and effect of the order). Put differently, if the commissioner lacked authority to grant the State’s motion to dismiss, the court’s decision at the hearing that dismissal was appropriate, and its written order, sufficed to dismiss the charges. I now explain my conclusion that the court properly exercised its discretion in dismissing the charges in this case without prejudice.

This court reviews a circuit court’s decision to grant or deny the State’s motion to dismiss criminal charges for an erroneous exercise of discretion. See *State v. Clark*, 162 Wis. 2d 406, 410, 469 N.W.2d 871 (Ct. App. 1991) (the circuit court has the discretion to grant or deny the State’s motion to dismiss). This court “will not reverse a discretionary determination by the [circuit] court if the record shows that discretion was in fact exercised and [I] can perceive a reasonable basis for the court’s decision.” *State v. Shanks*, 2002 WI App 93, ¶6, 253 Wis. 2d 600, 644 N.W.2d 275. Moreover, “even when the circuit court does not adequately explain its reasoning, [I] may search the record to determine if it supports the court’s discretionary decision.” *Countrywide Home Loans, Inc. v. Schmidt*, 2007 WI App 243, ¶122, 306 Wis. 2d 200, 742 N.W.2d 901.

“Prosecutors enjoy largely unfettered discretion in the initiation of criminal proceedings.” *State v. Braunsdorf*, 98 Wis. 2d 569, 572, 297 N.W.2d 808 (1980). This also generally includes the discretion to seek dismissal of criminal charges. *Id.* at 573; *Clark*, 162 Wis. 2d at 410. However, the prosecutor’s discretion to seek dismissal “is subject to the independent authority of the [circuit] court to grant or refuse a motion to dismiss ‘in the public interest.’” *State v. Kenyon*, 85 Wis. 2d 36, 45, 270 N.W.2d 160 (1978).

“The standard that the decision should be ‘in the public interest’ is admittedly broad.” *Id.* at 46.

However, in all cases some finding should be made with respect to the impact of the ruling on the public interest in proper enforcement of its laws and the public interest in allowing the prosecutor sufficient freedom to exercise [the prosecutor’s] legitimate discretion, to employ to the best effect [the prosecutor’s] experience and training, and to make the subjective judgment implicit in the broad grant of authority under [an earlier statute setting forth the duties of the district attorney].

Id. at 47.

Here, the circuit court implicitly concluded that dismissing the charges in this case served the public interest as it allowed the State to prosecute these charges together with other charges in the new case. The court explained that the State has discretion to move to dismiss charges and that not dismissing the charges in this case would cause problems because the same charges had already been filed in the new case. My review of the record supports the court’s decision, as the dismissal of the charges supported “proper enforcement of [the] laws” by allowing the State to prosecute the charges in a manner that simplified a potential trial and therefore conserved judicial resources, and also allowed the prosecutor “sufficient freedom to exercise [her] legitimate discretion” in joining the charges with the additional charges in the new case. *See id.*

Graham-Jackson argues that the circuit court commissioner’s dismissal violated due process because it prevented the circuit court from ruling on the dismissal. As stated, I conclude that the court did rule on the dismissal at the May 2025 hearing, albeit in an unusual manner. Graham-Jackson further asserts that the dismissal by the commissioner blocked judicial review because only an order of the circuit court can be appealed. As this court is reviewing the circuit court’s dismissal on appeal, this assertion lacks merit.

Graham-Jackson raises several new arguments for the first time in his reply brief. Specifically, he argues that the circuit court was obligated to, and failed to, hold a hearing de novo on the circuit court commissioner's dismissal of the charges pursuant to WIS. STAT. § 757.69(8); that the application of the bail money posted in this case to the bail requirement in the new case shows that this case was not lawfully dismissed; and that he was denied the right to counsel in both this case and the new case. Because Graham-Jackson raises these issues for the first time in his reply brief, I do not consider them. See *Bilda v. County of Milwaukee*, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661 ("It is a well-established rule that [I] do not consider arguments raised for the first time in a reply brief.").

For the reasons stated above, I affirm the circuit court's order of dismissal.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals