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**DISTRICT II**

June 12, 2019

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

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2018AP1124

State of Wisconsin v. Patrick D. Jefferson (L.C. #2017CF204)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).**

Attorney John Miller Carroll appeals from a denial of his motion for reconsideration. At issue is our jurisdiction. 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

(2017-18).<sup>1</sup> Because Carroll did not raise any new issues in his motion for reconsideration, we lack jurisdiction.

The facts are undisputed. Carroll was retained by Patrick D. Jefferson to represent him in a criminal matter in October 2017. Jefferson requested a speedy trial, and a trial date of January 3, 2018, was chosen. At a pretrial conference on December 19, 2017, Carroll was informed that December 29 was the last day the court would be open before the January 3 trial. The court would close at 4:30 p.m.

On December 29, 2017, Carroll moved to withdraw as counsel and efiled his motion at 4:38 p.m. The court was closed. When it opened on January 3, 2018, the motion was then formally filed. Although the clerk was working on January 2, 2018, the Consolidated Court Automation System did not allow her to view the motion as it was a holiday. Carroll e-mailed the prosecutor at 6:00 p.m. the night before the trial, but made no other effort to follow up on his motion to withdraw.

On the morning of the trial, the court was notified about the motion to withdraw. Although aware of the intent to withdraw, the prosecutor had not seen the motion and was unable to access it prior to the court proceedings. With jurors and witnesses already assembled, some having been bused to the trial from custodial locations, the court granted the motion to withdraw but assessed juror fees against Carroll.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

On January 4, 2018, Carroll wrote a letter to the court requesting it reconsider the imposition of jury fees against him, stating that he could not have been any more diligent than he had been. On January 25, 2018, the court ordered Carroll to pay \$1504.94 in fees resulting from the thirty-four jurors who were called to the courthouse for the trial. On April 20, 2018, Carroll moved to reconsider the assessment of the jury fees, which was denied on April 26, 2018.

Carroll appealed the April 26 decision on June 11, 2018. On July 25, we issued an order explaining that we lacked jurisdiction over the January 25 order, which was the final order from which an appeal as of right could be taken, *see* WIS. STAT. § 808.03(1), and that the required ninety days had passed, *see* WIS. STAT. § 808.04(1). We requested the parties to address whether we had jurisdiction over the motion for reconsideration that was denied by order of April 26.

An appeal cannot be taken from an order denying a motion for reconsideration which presents the same issues as those determined in the order sought to be reconsidered. *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972); *Silverton Enters., Inc. v. General Cas. Co. of Wis.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). “Although this rule can be a trap for the unwary and at times may be harsh, the policy behind the rule is to prevent a party from extending the time to appeal by filing a motion for reconsideration.” *La Crosse Tr. Co. v. Bluske*, 99 Wis. 2d 427, 429, 299 N.W.2d 302 (Ct. App. 1980).

To determine whether a new issue exists, we compare the issues raised in the motion for reconsideration with those disposed of in the original order. *See Harris v. Reivitz*, 142 Wis. 2d 82, 87, 417 N.W.2d 50 (Ct. App. 1987). Consistent with the policy favoring reconsideration, the “new issues” test is liberally applied. *See State v. Edwards*, 2003 WI 68, ¶12, 262 Wis. 2d 448,

665 N.W.2d 136. Whether a motion for reconsideration raises a new issue is a question of law, which we review de novo. *See id.*, ¶7.

We conclude that the motion for reconsideration did not raise any new issues that were not already disposed of by the original order. In his January 4 letter to the court, Carroll made it clear that he filed his motion minutes after the courthouse closed. He also noted that a court employee was working on the day after the motion was filed, but that she could not print it out due to it being a holiday. He also indicated he e-mailed the prosecutor the night before trial about his motion. Because he believed he was as diligent as possible, he asked the court to reconsider. In its January 25 order, the court determined that Carroll had filed his motion after the court had closed for the day—a day leading into a well-known holiday weekend—and failed to call the court, clerk, or district attorney’s office to follow up. Because Carroll failed to alert the court of his motion in a timely manner, it imposed the costs incurred to bring in almost three dozen jurors.

Carroll’s April 20 motion for reconsideration offers no new issue. It is mostly a rehash of the matters discussed between Carroll and the court at the January 3 hearing, Carroll’s January 4 letter to the court, and the court’s January 25 order. The only additional content is a lengthy quotation from WIS. STAT. § 801.18(4)(e), which generally provides that if an electronically-filed document is submitted by 11:59 p.m., it is generally considered filed on that day. Carroll’s motion then quotes, without attribution, the comment to § 801.18, explaining how this is a departure from the ways of paper filing. Sec. 801.18, Comment. But this is not a new issue or, if it is, Carroll fails to explain its novelty. Everyone knew about the electronic filing system and no one disputed that Carroll submitted his motion at the end of the day on December 29. The point of the court’s order was that Carroll, knowing that he had submitted his motion after the close of

business, should have contacted others about his motion so that the expense of calling in jurors and transporting witnesses could have been avoided. Carroll's motion followed the same line of argument previously rejected.

Carroll attempts to argue in his appellate brief that there were new issues raised in his motion for reconsideration. Specifically, that the imposition of fees should have turned on criteria such as diligence, bad faith, negligence, and timeliness. But those criteria were not part of his April 20 motion and they certainly were not developed into a coherent legal argument.

Carroll's other arguments are predicated on the jurisdiction of this court over this appeal, which we do not have. Accordingly, we decline to address them.

Upon the foregoing reasons,

IT IS ORDERED that the appeal is dismissed summarily pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*