



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 II

July 16, 2025

To:

Hon. Timothy D. Boyle
Circuit Court Judge
Electronic Notice

Ana Lyn Babcock
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

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

2024AP1606-CR

State of Wisconsin v. Jarvis T. Walker (L.C. #2023CF233)

Before Neubauer, Grogan, and Lazar, JJ.

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).

Jarvis T. Walker appeals the circuit court's order of dismissal without prejudice of his criminal case for a multitude of charges for manufacture or delivery of cocaine, delivery of schedule I or II narcotics (fentanyl), possession with intent to deliver cocaine and fentanyl, possession of a firearm by a felon, maintaining a drug trafficking place, possession of drug paraphernalia, and felony bail jumping.¹ Walker, who had filed a prompt disposition demand

¹ The charges were brought pursuant to WIS. STAT. §§ 961.41(1)(cm)1g, 961.41(1)(a), 961.41(1m)(cm)3, 961.41(1m)(dm)1, 941.29(1m)(a), 961.42(1), 961.573(1), and 946.49(1)(b) (2023-24).

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

pursuant to WIS. STAT. § 971.11,² contends the court did not appropriately exercise its discretion when determining whether to dismiss his latest case with or 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. Because there was indeed a failure to exercise discretion in considering whether to dismiss with or without prejudice, we reverse the order of the court and remand with directions.

The relevant facts are straightforward. Walker's first criminal action for the conduct alleged in this case³ was dismissed without prejudice upon the State's motion. The present criminal case (with 8 counts) was filed in February 2023, and then amended (to 23 counts) in March 2023. The request for a prompt disposition by Walker, in prison on another criminal case, was filed on June 14, 2023. Despite repeated efforts, his counsel's requests for discovery of the identification of an unnamed confidential informant were not immediately addressed by the State.

In particular, Walker's counsel sought the identity of an unnamed confidential informant noted on the State's witness lists. Three months after the request and 19 days before the jury trial, the State identified the source. After the disclosure, Walker's counsel recognized the name

² Pursuant to WIS. STAT. § 971.11, also known as the Wisconsin Intrastate Detainer Act, an individual incarcerated in prison facing other felony charges may file a demand for a "prompt disposition" of his or her pending criminal case, and the State "shall bring the case on for trial within 120 days after receipt of the request" or the matter shall be dismissed. WIS. STAT. § 971.11(1)-(2). The Act "is designed to provide inmates with speedy disposition of pending charges." *State v. Asmus*, 2010 WI App 48, ¶5, 324 Wis. 2d 427, 782 N.W.2d 435.

³ Racine County Case No. 2022CF1113.

and realized she had a representation conflict and was ethically obligated to withdraw.⁴ Coincident with the motion to withdraw, Walker’s counsel filed a motion to dismiss this second criminal case with prejudice due to the State’s violation of the prompt disposition statutory deadlines and based upon the relevant factors set forth in *State v. Davis*, 2001 WI 136, ¶29, 248 Wis. 2d 986, 637 N.W.2d 62.

The circuit court heard both motions on the pre-set jury status date. The State conceded that its late identification of the confidential informant was “an oversight, something [it] neglected to do.” Walker’s counsel asked the court to consider the *Davis* factors and dismiss the second criminal case with prejudice.

Instead of mentioning the *Davis* factors, the circuit court explained, “in looking at the history, one, I can’t think of one prompt disposition I’ve dismissed with prejudice.” It further stated that the prior case was dismissed where there was “an ongoing investigation” and not due to a “failure on the State’s part.” Then, noting that Walker was not at fault for the conflict necessitating a dismissal in this second case and that he had filed a prompt disposition request, stated that was “not going to happen.” Without any further deliberation, the court dismissed the case without prejudice.⁵

⁴ The confidential informant was not only represented by another attorney in the public defender’s office, but that individual’s case was also impacted by the anticipated testimony against Walker.

⁵ The actual order for dismissal does not indicate whether the counts were dismissed with or without prejudice. However, “where there is conflict between a [circuit] court’s unambiguous oral pronouncement and a written judgment, the oral pronouncement controls.” *State v. Ortiz*, 2001 WI App 215, ¶27, 247 Wis. 2d 836, 634 N.W.2d 860; *State v. Perry*, 136 Wis. 2d 92, 114, 401 N.W.2d 748 (1987).

In *Davis*, our supreme court instructed courts on how to determine whether a dismissal due to a failure to comply with a demand for prompt disposition should be with or without prejudice. It also set out the following factors, among others, that should be considered:

[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.

Id., ¶29 (footnote omitted). It is “[b]y balancing these and other factors” that “the circuit court will not necessarily produce the same result in every case.” *Id.* This appears to be contrary to the circuit court's statement that the results were always the same in its cases under these circumstances.

The decision to dismiss with or without prejudice is one that we will affirm “so long as the circuit court did not erroneously exercise its discretion.” *Id.*, ¶28. “An erroneous exercise of discretion occurs when the circuit court does not consider the facts of record under the relevant law or does not reason its way to a rational conclusion.” *Id.*; see also *State v. Hall*, 2002 WI App 108, ¶17, 255 Wis. 2d 662, 648 N.W.2d 41 (“fill in the blank” decisions or ones with minimal explanation reflect “decision-making” but not “a process of reasoning ... based on a logical rationale” as required (omission in original; citation omitted)).

The circuit court here did not appropriately exercise its discretion in determining whether to dismiss Walker’s second criminal case without prejudice. Even the State concedes this failure. The only remaining issue is whether, when we reverse—as all parties agree we must—we remand and instruct the circuit court to consider the *Davis* factors or instruct that court as to whether dismissal with prejudice is appropriate.

This appeal implicates the interplay between the public’s right to safety and an individual’s right to a prompt resolution of his criminal case. While the charges are significant, Walker is facing a third criminal action for the same alleged conduct even *after* demanding his statutory right to a prompt disposition in a second case that was dismissed due to potential negligent conduct by the State. The answer to the question requires specific factfinding—something this court does not do. See *State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶2 n.2, 290 Wis. 2d 352, 714 N.W.2d 900.

A thorough review of the Record does not provide us with the necessary facts upon which we could, as Walker urges, resolve the question of whether the second criminal case should have been dismissed with prejudice. Accordingly, the circuit court erred when it dismissed the case without sufficiently considering the *Davis* factors. We reverse the circuit court’s order dismissing without prejudice and remand with directions that it⁶ follow the dictates of *Davis* and determine whether a dismissal with prejudice is appropriate after a consideration of the relevant factors.

⁶ Walker bemoans the return of this matter to a judge who, he alleges, has already determined that dismissals with prejudice are *never* appropriate in a prompt disposition situation. We note that, upon a reversal and remand, his right to judicial substitution is reinstated. See WIS. STAT. § 801.58(7).

Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed and cause remanded with directions, pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals