

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 30, 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. 95-2859-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CITY OF GREENDALE,

Plaintiff-Respondent,

v.

PAULA A. WASHOW,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

FINE, J. Paula Washow appeals from the trial court's order dismissing without prejudice this traffic-citation action against her.¹ We affirm.

A Village of Greendale police officer issued a speeding citation to Washow. On the day set for trial, the officer was on vacation and not available. The trial court denied the Village's motion for an adjournment, but did grant

¹ Washow mistakenly characterizes the trial court's order as a judgment.

the Village's request that the case be dismissed without prejudice. Washow claims that the trial court erroneously exercised its discretion, and that the dismissal should have been with prejudice. We affirm.

Prosecution of both criminal cases and ordinance violations are left to the sound discretion of the prosecuting officer, subject to the trial court's superintending authority to deny the prosecuting officer's motion to dismiss unless such dismissal is in the public interest. *State v. Kenyon*, 85 Wis.2d 36, 42-47, 270 N.W.2d 160, 162-165 (1978). Trial courts in this state do not have the authority to dismiss criminal prosecutions with prejudice prior to the attachment of jeopardy unless the defendant has been deprived of his or her right to a speedy trial. *State v. Braunsdorf*, 98 Wis.2d 569, 575, 297 N.W.2d 808, 811 (1980). Inasmuch as *Kenyon* recognized that the factors governing a trial court's exercise of discretion in connection with the termination of a prosecution are the same whether the prosecution is that of, on the one hand, a civil municipal-ordinance violation or, on the other hand, a criminal case, *Kenyon*, 85 Wis.2d at 44, 270 N.W.2d at 164, we see no principled reason not to apply the *Braunsdorf* rule to prosecutions of municipal ordinance violations. Indeed, *Braunsdorf* recognized that one of the foundations underlying the rule limiting a trial court's discretion to dismiss criminal cases with prejudice was that dismissal of a criminal case had "broader implications for society as a whole" than does the dismissal of the ordinary civil case. *Braunsdorf*, 98 Wis.2d at 585, 297 N.W.2d at 816. Dismissal of ordinance violations similarly have "broader implications for society as a whole" than does the dismissal of a civil case between private litigants.

The trial court here was without authority to dismiss the case with prejudice, and, accordingly, did not, *a fortiori*, erroneously exercise its discretion in refusing to do so. *Cf. Lievrouw v. Roth*, 157 Wis.2d 332, 358-359, 459 N.W.2d 850, 859-860 (Ct. App. 1990) (trial court's discretionary determination will be upheld on appeal if it is "consistent with the facts of record and established legal principles"). Washow's claim that the dismissal without prejudice was just another form of "adjournment," which the trial court had denied, was rejected in *Braunsdorf*, 98 Wis.2d at 576-577, 297 N.W.2d at 811-812, and we reject it here.

By the Court. – Order affirmed.²

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

² The Village argues that Washow lacks standing to appeal the trial court's order. In light of our decision that the trial court acted according to law, we do not discuss this issue. See **Gross v. Hoffman**, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).