COURT OF APPEALS
DECISION
DATED AND RELEASED

JULY 30, 1997

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2270-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL L. TAYLOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: BRUCE K. SCHMIDT, Judge. *Reversed and cause remanded with directions.*

ANDERSON, J. Daniel L. Taylor appeals from a judgment of conviction for operating after revocation (OAR) and an order denying his motion for postconviction relief. Taylor argues that he should be granted a new trial for two reasons. First, he contends that the trial court failed to advise him that it could not accept a jury verdict unless it was unanimous. Second, he contends that he did

not knowingly waive his right to counsel based upon an understanding of the dangers and difficulties of self-representation, the seriousness of the charge and the general range of penalties he faced. For the reasons stated herein, we reverse the judgment and the order and remand for a new trial.

The relevant facts are not disputed. On August 13, 1995, Officer Douglas Berger investigated a disturbance in which witnesses identified Taylor as the driver of one of the vehicles involved. Taylor denied that he was driving. Berger issued Taylor a citation for OAR. The citation included notice of a mandatory court appearance.

At the initial appearance on September 26, Taylor entered a plea of not guilty. At the pretrial hearing on October 12, Taylor confirmed that he did not have an attorney yet, but that he did want a jury trial. At the scheduled jury trial on October 17, Taylor's late arrival prompted the court to reschedule the trial for October 31.

At trial, Taylor indicated a preference for a court trial rather than a jury trial. Subsequently, the court convicted Taylor of OAR, fined him $2000 plus costs, and sentenced him to one year in the county jail. Taylor then moved for postconviction relief. The court denied Taylor's motion. Taylor appeals.

A distraction we must first address, before proceeding to the merits, is the wholly inadequate brief submitted by the State. The brief consists of a one-paragraph argument containing the standard of review and two conclusory statements. It fails to develop any argument on the issue of whether Taylor was advised of his right to a unanimous jury verdict. In addition, the brief ignores the issue of waiver of right to counsel.

In response to the insufficiency of the State's brief, Taylor filed a motion for summary disposition. We held the motion in abeyance pending this decision. Although we deny the motion, we exercise our discretionary authority to strike the State's brief due to its total inadequacy. *See* § 809.83(2), STATS. Section 809.19(3)(a), STATS., requires that the respondent's brief contain:

> [a]n argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the [respondent], the reasons therefor, with citations to the authorities, statutes and parts of the record relied on as set forth in the Uniform System of Citation and SCR 80.02.

We admonish the State; its obligation to properly argue an issue on appeal is the same whether the defendant is convicted of a felony or a traffic violation. Even the State must comply with the rules of appellate procedure.

We now turn to the merits. First, the trial court's failure to advise Taylor of his right to a unanimous jury verdict violates the mandate of ***State v. Resio***, 148 Wis.2d 687, 436 N.W.2d 603 (1989). ***Resio*** requires that the circuit court in a criminal case advise the defendant that it cannot accept a jury verdict that is not unanimous. *See* ***id.*** at 696-97, 436 N.W.2d at 607. ***Resio*** is dispositive; accordingly, we reverse and remand for a new trial.

Although we need not decide Taylor's waiver of right to counsel argument, we note that ***State v. Klessig***, No. 95-1938, slip op. at 10 (Wis. June 24, 1997), requires a proper colloquy be conducted in every case where a defendant seeks to proceed pro se. The exchange at Taylor's trial was as follows:

> THE COURT**:** Mr. Taylor, first of all, you understand you have a right to an attorney; correct?
> [THE DEFENDANT]**:** Yes.

> THE COURT**:** And you have indicated to me on several occasions that you wish to waive your right to an attorney and proceed without an attorney; correct?
> [THE DEFENDANT]**:** Correct.

This exchange does not meet the requirements of ***Klessig***. A proper colloquy must be designed to ensure that the defendant:

> (1) made a deliberate choice to proceed without counsel, (2) was aware of the difficulties and disadvantages of self-representation, (3) was aware of the seriousness of the charge or charges against him, and (4) was aware of the general range of penalties that could have been imposed on him.

Id.

By the Court.—Judgment and order reversed and cause remanded with directions.

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