

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 16, 1997

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.

**Nos. 96-3288-CR
96-3289-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

XHEVAT TAHIRI,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

NETTESHEIM, J. Xhevat Tahiri appeals from judgments of conviction and an order denying his postconviction motions alleging ineffective assistance of counsel and seeking sentence modification. The trial court denied the motions without a hearing because Tahiri had not timely filed a brief and supporting affidavits in support of the motions. The court had previously directed

that these documents be filed prior to a hearing. When the sixty-day deadline for the court to decide the postconviction motions had expired pursuant to § 809.30(2)(i), Stats., the court denied the motions, ruling that it had lost jurisdiction. We affirm.

Tahiri was convicted of multiple counts of misdemeanor battery, disorderly conduct and bail jumping. He appealed, but subsequent to the filing of the appeal, he received leave from this court to terminate his appeal in order to pursue postconviction motions in the trial court. Tahiri filed these motions with the trial court on July 17, 1996. Pursuant to § 809.30(2)(i), STATS., the deadline for deciding the motions was September 17.

The trial and the sentencing in this matter were conducted by Judge Robert J. Kennedy. However, by the time Tahiri filed his postconviction motions, Judge Kennedy was no longer assigned to the criminal division. Instead, Tahiri's motions were assigned to Judge John Race, who scheduled the matter for hearing on September 5, 1996. However, when Judge Race learned early on in the hearing that Tahiri's motions included a request for "reconsideration of the sentence," he concluded that such request was more properly addressed to Judge Kennedy, who had sentenced Tahiri. Therefore, Judge Race referred the matter back to Judge Kennedy, noting that "[Tahiri's counsel] will request an extension of time from Court of Appeals."

When the matter was assigned back to Judge Kennedy, he issued a directive on September 9, 1996, instructing Tahiri to file within two weeks "a detailed legal brief and supporting affidavits outlining the facts in support of each paragraph of his motions for postconviction relief and a discussion of the case and/or statutory law in support of defendant's position on each paragraph." In his

written decision denying Tahiri's motions, Judge Kennedy stated that he issued this directive "on the assumption that the defense would request an extension of time from the appellate court since a motion for postconviction relief must be decided within 60 days or be deemed denied."

Tahiri never obtained an extension of the sixty-day deadline. Nor did he file the brief until September 30, beyond the two-week deadline set by Judge Kennedy and beyond the sixty-day deadline of September 17 pursuant to § 809.30(2)(i), STATS. Judge Kennedy denied the motions without a hearing based on his conclusion that he had lost jurisdiction to decide the motions. Tahiri appeals.

However, Tahiri's appellate brief does not directly address the jurisdictional basis upon which Judge Kennedy denied the motions. Instead, Tahiri contends that Judge Kennedy erred by requiring him to first file a brief in support of the motions. We disagree. We stress that this is not a case where Judge Kennedy denied Tahiri's request for a *Machner* hearing¹ on the grounds that the motion was insufficient. *See, e.g., State v. Bentley*, 201 Wis.2d 303, 548 N.W.2d 50 (1996). To the contrary, Judge Kennedy's order explicitly stated: "Once [the] brief is filed, I'll set it for hearing giving a time allotment based on an estimate from the content of the brief."

Rather, Judge Kennedy merely sought to obtain additional legal and factual information about the case in advance of the hearing so that he might be informed and prepared to address the matter at the hearing. This strikes us as an example of good judicial practice. We know of no law which precludes a judge

¹ *State v. Machner*, 92 Wis.2d 797, 285 N.W.2d 905 (Ct. App. 1979).

from requiring a litigant to supply this kind of assistance in advance of a hearing. To the contrary, we conclude that a court has the inherent authority to direct a party to supply such information. We see no misuse of discretion in Judge Kennedy's directive that Tahiri provide this information. On this basis alone, we affirm the order.

In the alternative, we choose also to address Tahiri's sentencing issue on the merits. On one of the bail jumping charges, Judge Kennedy sentenced Tahiri to three years in prison. On the other bail jumping charge, Judge Kennedy withheld sentence and placed Tahiri on a three-year term of probation consecutive to the prison term. As a condition of probation, Judge Kennedy ordered Tahiri to serve one year in the county jail to commence upon Tahiri's release from prison.²

Tahiri challenges the county jail term imposed as a condition of probation. He argues that this represents a harsh sentence in light of the prison term already imposed. He also argues that this probation condition reflects bias and prejudice on the part of Judge Kennedy.

We disagree. We have read the sentencing transcript in detail. After hearing from the attorneys and Tahiri, Judge Kennedy performed an exhaustive review of Tahiri's numerous contacts with the police. Besides the criminal convictions on Tahiri's record, Judge Kennedy noted that certain of the other contacts could have been prosecuted as criminal matters rather than ordinance violations. The judge indicated that he was "appalled" at the pattern of violent conduct practiced by Tahiri. The judge also noted Tahiri's gang affiliations.

² On the other convictions, Judge Kennedy also imposed concurrent three-year terms of probation. However, Judge Kennedy did not order jail time as a condition of these additional terms of probation.

We view Judge Kennedy's sentences as lenient. The judge withheld sentences and granted Tahiri the privileges and opportunities of probation on all charges save the one which resulted in prison time. And, as to that charge, Tahiri raises no appellate complaint. We see no misuse of discretion in Judge Kennedy's decision to impose a one-year term in the county jail as a condition of probation on one of the probation-related convictions.

By the Court.—Judgments and order affirmed.

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

