

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 26, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP349-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2012CF201

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JIMMY A. BALDWIN,**

**DEFENDANT-APPELLANT.**

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APPEAL from orders of the circuit court for Chippewa County:  
STEVEN R. CRAY, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Jimmy Baldwin appeals orders dismissing a criminal complaint against him *without* prejudice and denying his motions for reconsideration. Baldwin contends the complaint should have been dismissed *with*

prejudice. Because we conclude the circuit court properly exercised its discretion, we affirm the orders.

¶2 The complaint charged Baldwin with escape, forgery, uttering a forged instrument, and identity theft, all as a party to a crime. The State alleged Baldwin was released from prison pursuant to a forged amended judgment of conviction. Pursuant to WIS. STAT. § 971.11,<sup>1</sup> the Intrastate Detainer Act, Baldwin requested a “prompt disposition” of the case in a document received by the district attorney’s office on June 1, 2012. Under § 971.11, Baldwin’s trial had to commence by October 1, 2012, or the complaint had to be dismissed. On August 27, 2012, the State filed a motion to toll or extend the time limit because it intended to try Baldwin and two other inmates as co-conspirators. The court denied the motion and dismissed the complaint without prejudice. Baldwin filed a motion for reconsideration and two amended motions requesting dismissal with prejudice. He claimed pendency of the charges adversely affected his custody classification, denying him programming at a medium security facility, effectively prevented any realistic opportunity for parole, and increased his stress and anxiety. The court denied the motions for reconsideration.

¶3 Whether charges should be dismissed with or without prejudice is committed to the circuit court’s discretion. *State v. Davis*, 2001 WI 136, ¶¶5, 34, 248 Wis. 2d 986, 637 N.W.2d 62. An erroneous exercise of discretion results when it is based on an error of law or when the circuit court does not consider the facts of record under the relevant law or does not reason its way to a rational

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

conclusion. *Id.*, ¶28. In *Davis*, also an intrastate detainer case, the court identified some of the factors the court should consider in making its discretionary determination. *Id.*, ¶29. Here, the circuit court considered all of the *Davis* factors and reached its decision after balancing the applicable factors.

¶4 The first and second factors identified in *Davis* (the reasons for and the length of the delay and whether the nature of the case makes it unreasonable to expect adequate preparation within the statutory time period) strongly support dismissal without prejudice. The court found the complexity of the case required additional time for the State to prepare for trial. Testimony would be needed from expert witnesses, prison officials, clerks of the circuit court, judges from Milwaukee and Madison, and possibly court officials from Louisiana. The complexity of the case and the need to secure the testimony of judges whose own calendars must be taken into account appropriately influenced the circuit court's decision.

¶5 The court acknowledged other factors that weighed in favor of dismissal with prejudice. The court agreed that Baldwin's conduct did not contribute to the delay and he did not waive his statutory right. Further, program eligibility and movement within the institution, and the unavailability of a transfer to a less secure facility, and Baldwin's anxiety and concern weighed in favor of dismissal with prejudice. The court found there had not been a significant effect on the public's interest in the prompt prosecution of crimes. Regarding other factors identified in *Davis*, the court determined they were not applicable because Baldwin had not shown any effect on his defense, his rehabilitative process, the possibility of concurrent sentencing, the opportunity for parole or any effect on a victim. Balancing these concerns, the court considered the correct law and the

relevant facts and properly exercised its discretion by reaching a rational conclusion. *See id.*, ¶28.

¶6 Baldwin contends he was prejudiced by the State's issuance of a new complaint that added sixteen years' prison exposure. As the circuit court noted, the State could have amended the information even if the trial took place before October 1, 2012. Baldwin contends immediately recharging him had the same effect as granting a continuance, which is prohibited by WIS. STAT. § 971.10(3)(c). That argument is inconsistent with the holding in *Davis*. By recognizing the circuit court's authority to dismiss the complaint without prejudice, *Davis* acknowledges the State's right to recharge a defendant notwithstanding the prohibition against granting a continuance.

¶7 Finally, Baldwin contends the court improperly considered its own calendar when it determined the matter could not be brought to trial before October 1, 2012. The judge stated he could not schedule the three-day trial before the October 1 deadline, but indicated he would have another judge appointed to try the matter. The ultimate finding that the State established good cause for dismissal without prejudice rested on the complexity of the case, not the circuit court's calendar.

*By the Court.*—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

