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Brown County, WI

2022CF000363

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September 22, 2023

Honorable Thomas J. Walsh
Circuit Court Judge, Branch II
Brown County Courthouse
100 S. Jefferson Street
Green Bay, WI 54301

RE: State of Wisconsin vs. Taylor Denise Schabusiness
Brown County Case No.: 2022CF000363

Dear Judge Walsh:

The State is in receipt of Schabusiness' Motion for Continuance. (300.) The State strongly objects to adjourning the sentencing hearing.

The State was notified by the Court on August 8, 2023, that Schabusiness was possibly seeking to retain an independent¹ PSI. The Court requested counsel notify the Court and State no later than August 22, 2023, of the date by which the defense PSI would be available. (292.) The Court explicitly sought to "avoid any delay in the sentencing hearing." Id.

The Court and State were notified on August 17, 2023, that counsel had retained Mr. Paul Hyland to prepare the defense PSI but was then unsure of when the report would be completed for a multitude of reasons. (294.) One of the reasons appeared to be that counsel would need to review the court-ordered PSI with Mr. Hyland and it was unclear when the court-ordered PSI would be completed. Id.

¹ Retained by the defense.

The Court's PSI was submitted on September 13, 2023. Counsel notified the Court and State that the defense PSI was "currently being drafted" and counsel sought permission to share the Court's PSI with Mr. Hyland. (296.) The State had no objection to this and the Court granted that request. (298.)

Schabusiness now moves to adjourn Tuesday's sentencing hearing on two grounds. (300.) The issue of reviewing the Court's PSI with Schabusiness is the more pressing concern but one that the State currently believes has been remedied. The State of course agrees that counsel should be able to review the PSI with Schabusiness prior to sentencing. Upon receipt of today's motion, counsel for the State spoke with the appropriate administrator at the Brown County Jail and have subsequently been notified that counsel was able to meet with Schabusiness on September 22, while this letter was being drafted. Jail officers advised that counsel would be given as much time as needed to meet with Schabusiness. The State currently is of the belief that proper arrangements have been made (and can be made again in the future if needed) and this issue is no longer grounds to adjourn sentencing.

The second reason for an adjournment is less compelling. The State can understand why Mr. Hyland would want to meet with Schabusiness to prepare his defense PSI, but there is not a clear reason why that meeting could not have happened in the seven weeks this sentencing hearing has been pending. Counsel outlined his own recent attempts to meet with Schabusiness at the jail, but it is unclear what other efforts were made to interview Schabusiness for the defense PSI. If the reason is that the defense was waiting for the Court's PSI to be submitted, there is no reason Mr. Hyland needed to wait to receive the Court's PSI to meet with Schabusiness. Schabusiness is certainly free to provide the Court with relevant information at sentencing, and "defense advocacy document[s]," State v. Greve, 2004 WI 69, ¶ 28, 272 Wis. 2d 444, 681 N.W. 2d 479. are sometimes the chosen mechanism. But there is no constitutional right to such a report, and there is currently insufficient justification for why sentencing needs to be delayed to finish this report. While useful, PSIs—whether court-ordered or prepared by a party—are fundamentally useful to provide sentencing courts with *information*. See Greve, 272 Wis. 2d 444, ¶ 9. Opinions or recommendations made by the authors of those reports are less relevant than the factual information contained in those reports, which can be relied upon by the sentencing court to reach an appropriate exercise of the courts' respective sentencing discretion. Moreover, the parties were on notice by early August that the Court sought to avoid this exact issue from causing sentencing to be adjourned. (292.) This issue is not grounds to adjourn sentencing in this case.

There have been many hearings in this case. The crime victims, the parties, and the community deserve closure. For these reasons, the State respectfully requests the Court deny the motion to adjourn the sentencing hearing.

Electronically Signed By:
Caleb Saunders
Deputy District Attorney

cc: Attorney Christopher Froelich