

**FILED**  
**09-25-2023**  
**Clerk of Circuit Court**  
**Outagamie County**  
**2000CF000403**

STATE OF WISCONSIN	CIRCUIT COURT	OUTAGAMIE COUNTY
STATE OF WISCONSIN	DA Case No.: 2004OU006401	
Plaintiff,	Assigned DA/ADA: Melinda Tempelis	
	Agency Case No.:	
vs.	Court Case No.: 2000CF000403	
KENNETH A. HUDSON		
Defendant.		
<b>MOTION TO DISMISS §974.06</b>		
<b>MOTION</b>		
<i>For Official Use</i>		

The State of Wisconsin by District Attorney Tempelis moves the Court to dismiss the defendant's §974.06 motion with prejudice for repeated and egregious violations of the Court's scheduling order.

A scheduling order was entered by the Court pursuant to Wis. Stat. §802.10(3)(c). That order directed the defendant to file his §974.06 motion by September 21, 2023. The defendant has intentionally not done so. Pursuant to Wis. Stat. §805.03, the State moves the Court to dismiss the defendant's motion on its merits. The standard for dismissal with prejudice was set forth by the Supreme Court in Johnson v. Allis Chalmers, 162 Wis.2d 261, 470 N.W.2d 859 (1991) as follows:

[U]nder our current case law, we will sustain the sanction of dismissal if there is a reasonable basis for the circuit court's determination that the noncomplying party's conduct was egregious and there was no "clear and justifiable excuse" for the party's noncompliance. Once these factors are established, it is within the circuit court's discretion to dismiss the action.

**The defendant's conduct in failing to comply with the court's scheduling order is egregious with no clear and justifiable excuse.**

### **Direct Appeal**

The defendant filed a comprehensive direct appeal in appeals case 10AP166CR in which he raised 45 issues. The Court of Appeals denied this appeal. The Court of Appeals noted that "no reasonable person would have accepted Hudson's conspiracy defense."

Further, the “frame-up” defense was “preposterous”. The Court further noted Hudson engaged in a pattern of non-cooperation with attorneys and delay tactics.

We agree with the circuit court’s conclusion that Hudson forfeited his right to counsel. Not only did Hudson reject and fail to cooperate with several attorneys in this case, Hudson’s actions in a prior case revealed a continuing pattern of conduct. Hudson objects that the judge in the prior case had concluded the conduct there was not for the purpose of delay. The circuit court in this case, however, was free to draw its own conclusions, having the benefit of witnessing Hudson’s continuing pattern of conduct. Further, that Hudson’s behavior resulted in a delay in the prior case demonstrates that he knew he might obtain the same in this case. Indeed, he did obtain one trial delay in this case after he refused to cooperate with his attorney.

### **July 2013 to January 2015**

The initial §974.06 motions were filed on July 9, 2013, September 17, 2013, September 27, 2013 and June 22, 2013. On February 4, 2014, the State filed a 20 page response to these motions noting that-- since the date of the sentencing-- the defendant had over 30 hearings with 4 separate post-conviction counsel.

The State argued most of the issues the defendant raised in his post-conviction motions were previously raised in the trial court and therefore barred. In addition, the State argued the defense presented novel arguments that were not raised during his appeal and the defendant had not presented a sufficient reason for not presenting these claims previously. The defendant asked for a 30 day extension to file his reply brief until June 6, 2014. This motion was granted. On June 4, 2014, the defendant requested an extension of time to file his reply brief until June 27, 2014. He alleged he ran out of typewriter ribbons. The defendant asked for an extension to August 14, 2014 alleging his typewriter broke. On August 25, 2014, the defendant filed a reply brief. No decision was made because the defendant asked for a stay of the proceedings and subsequently withdrew this motion.

**January 2015 to September 2015**

On January 13, 2015, the defendant asked the Court to stay the proceeding until the attorney that reporter Dee Hall arranged for him could be retained. On January 22, 2015, Hudson reported his family had retained Attorney Henak. Atty. Henak made an appearance on March 3, 2015 and requested a stay of the §974.06 motion. On July 24, 2015, Attorney Henak filed a stipulation and order to withdraw from the case. Hudson requested until September 18, 2015 to obtain replacement counsel.

**September 2015 to February 2018**

On September 16, 2015, Attorney Miller filed a notice of appearance and asked for a stay of proceedings. Attorney Miller requested several stays of time to obtain DNA testing and on January 30, 2018 filed a 47 page amended post-conviction motion on behalf of the defendant. This motion contained a 107 page appendix. The Court set a briefing schedule. On February 8, 2018, the defendant sent a letter to the Court alleging his attorney made false statements in the filing and the defendant did not consent to the arguments made. The defendant asked the Court not to rule on this motion or to make the State respond. Attorney Miller moved to withdraw from the case. That order was granted on February 16, 2018.

On February 16, 2018, the State moved to dismiss the §974.06 motion. On March 12, 2018, the defendant asked the Court for a 10-day extension to respond to the State's motion to dismiss. Inexplicably, on April 3, 2018 the defendant filed a motion to reinstate counsel specifically restating his allegation of attorney misconduct and then asking the Court to "order Miller back on the case." He also responded to the State's motion to dismiss.

**Conditional §974.06 motion filed April 18, 2018**

On April 19, 2018, the defendant filed a pro se §974.06 motion. This motion is 88 pages. It has a 3 volume appendix containing 240 pages. The defendant wrote a letter to the Court on

June 18, 2018 stating as follows: "I will withdraw my April 18, 2018 §974.06 motion, once I file my one final completed §974.06 motion."

### **July 29, 2018 to April 2022**

On July 29, 2018, the defendant asked for a stay of proceedings because he had retained Attorney Walter Stern. Attorney Stern requested time to review the file.

Approximately 11 months later, on July 18, 2019, Stern filed a notice of retainer. On August 25, 2021, Stern moved to withdraw. In his affidavit, Stern wrote the defendant terminated his representation on July 7, 2021. Thereafter, the defendant changed his mind and decided he wanted Stern to continue. Stern decided he could not continue and moved to withdraw.

Subsequently, the defendant wrote letters to the Court requesting the return of his file.

Attorney Stern was suspended by the Wisconsin Supreme Court and a scheduling hearing was set for April 4, 2022.

### **May 2022 to October 2022**

After defendant claimed health problems, in an order filed May 17, 2022, the Court granted the defendant's motion to extend the time for filing motions to June 30, 2022. The defendant again asked for an extension of time to file his motions on June 19, 2022 and again on August 3, 2022. The Court entered a scheduling order dated August 11, 2022 for the defendant to file his motion by September 30, 2022. On August 18, 2022, the defendant asked for a 2 to 3 week adjournment because he had COVID. The Court extended the filing date to October 14, 2022. The defendant again asked for an extension and the Court extended the date until October 31, 2022. On October 17, 2022, the defendant again requested an additional 30 days. This request was denied on October 18, 2022.

### **October 2022 to February 2023**

On October 20, 2022, the defendant retained Attorney Balskus. The State moved to disqualify Balskus because of a conflict of interest. The Court removed Attorney Balskus by order dated February 24, 2023.

### **Motion of August 15, 2023 is withdrawn**

At a Court hearing held June 15, 2023, the defendant appeared personally and was told his motion was due on August 15, 2023. On August 2, 2023, Hudson asked for a 45-day extension to file the motion to September 30, 2023. This was denied

On August 15, 2023, Hudson filed an 85 page §974.06 motion. The motion is signed by him. At the same time he filed hundreds of pages of attachments to the motion. On August 25, 2023, the defendant filed a motion to strike his August 15, 2023 motion and alleged he did not draft it. He stated he did sign it but did not review it. He alleged misconduct by Attorney Balskus in drafting a motion without his consent, in coercing and threatening him in order to get it filed and in lying to court during a motion hearing. He asked for additional time to file a motion.

### **August 31, 2023 to September 21, 2023**

On August 31, 2023, the Court extended the scheduling order to allow the defendant to file his motion by September 21, 2023. According to the defendant's filing of August 29, 2023, he received his file from Attorney Balskus on August 21, 2023. The defendant requested the court extend his time to file to September 21, 2023. The defendant stated:

**"Hudson respectfully asks this Court to grant this motion and grant Hudson until September 21, 2023 to have all of his motions filed! Hudson will not ask the Court for another extension in this case! This court can dismiss Hudson's case and appeal if he does not file his motions by September 21, 2023."**

The State believes the defendant's violation of the Court scheduling order is egregious. It is apparent the defendant has no intent to file a motion. The defendant has intentionally

sabotaged every filing made on his behalf. He filed and then withdrew his initial §974.06 motion in July 2013. He claimed the filing made by Attorney Miller was not authorized by him and contained false statements. He filed and then conditionally withdrew his April of 2018 §974.06 motion indicating he would dismiss it when a successor motion was filed. He claimed Attorney Balskus coerced him into making the filing made in August of 2023. The allegation that two separate attorneys filed documents without discussing them with him as the client and against the express wishes of him as the client does not seem credible. What would be the attorney's motivation? It is more likely Hudson manufactured excuses to get the pleadings struck in order to delay this matter.

His claim he did not have access to the law library and therefore did not have the resources to file his motions is not convincing. He has filed 2 lengthy prior post -conviction motions on his own behalf and has access to the motions filed by Attorney Miller, as well as the motion which was alleged prepared by Attorney Balskus.

There is no motion pending before the Court. The defendant has not ratified the allegations made in the April 2018 motion, which he stated is a placeholder until he can file a subsequent motion. All of the other motions were withdrawn by the defendant. There is no allegation for the State to respond to and no allegation made upon which a Court may grant relief. Moreover, the defendant stipulated to a dismissal if he failed to file on time.

The State notes the victim's parents are entitled to closure in this case. They have a constitutional right to a "timely disposition of the case, free from unreasonable delay." The Court has given the defendant ample opportunity to be heard for over 10 years. At this point, the State requests the Court to enforce the victim's constitutional right to timely disposition.

For these reasons, the State asks the Court to dismiss all pending §974.06 motions of the defendant with prejudice.

cc: Defendant, via mail

Date Signed: 09/25/23

Electronically Signed By:

Melinda Tempelis

District Attorney

State Bar #: 1032157