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IN CIRCUIT COURT WINNEBAGO COUNTY WISCONSIN

STATE OF WISCONSIN

BEFORE HON. DONALD POPPY,
Circuit Judge

VS. Case No. 94-CF-285

MARK H. PRICE,

MOTION HEARING

Defendant.

Oshkosh, Wisconsin, July 25, 2007

FOR THE STATE:

Ms. Susan Karaskiewicz, Special Prosecutor

FOR THE DEFENSE:

Mr. Byron Lichstein, University of Wisconsin
Law School

Defendant present on speakerphone

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1 **THE COURT:** Could we have the appearance
2 for the State of Wisconsin.

3 **MS. KARASKIEWIZ:** The State appears by
4 Special Prosecutor Susan Karaskiewicz.

5 **THE COURT:** And Mr. Lichstein, you want to
6 state your appearance, please.

7 **MR. LICHSTEIN:** Yes, Your Honor, the
8 defense appears by Byron Lichstein from the Frank J.
9 Remington Center, University of Wisconsin Law School.
10 Mr. Price, I believe, is going to appear by phone in just
11 a moment.

12 **THE COURT:** Very well. While we wait for
13 him on the phone, let me place this on the record. We're
14 waiting for Mr. Price to be placed on the telephone so he
15 can participate in this proceeding. But, by way of
16 background, Mr. Price was serving a sentence in the
17 Wisconsin State Prison System for a charge of first-degree
18 murder. In August of 1994 he was charged with being party
19 to the crime of a drug delivery, a related drug stamp
20 violation, both as a repeat offender. The first-degree
21 homicide conviction had occurred in January of 1991.

22 While he was incarcerated on the-- When the drug
23 charges were filed, he was accused of arranging the sales
24 outside of the prison. An Amended Complaint was filed in
25 February of 1995 which had added an allegation he

1 solicited someone outside the prison to kill the then
2 Winnebago County District Attorney Joseph Paulus who had
3 prosecuted him for the intentional first-degree murder
4 charge.

5 In June of 1995 there was a plea agreement. As a
6 result of a plea agreement -- the charge here was
7 attempting to solicit Mr. Paulus' demise, was amended to a
8 charge of threatening to injure a public official; and a
9 plea was entered to the drug delivery charge which carried
10 a maximum penalty of nine years imprisonment; and a plea
11 was also entered on the threat to injure a public official
12 which had a maximum exposure of -- or the defendant had a
13 maximum exposure of five years.

14 Judge Bruce Schmidt, who was the Judge, sentenced the
15 defendant to the maximum sentence as allowed, that to run
16 consecutively with one another and consecutive to the
17 murder charge sentence the defendant was then serving.

18 There were post-conviction motions filed. Motions
19 were denied and the matter was appealed to the Court of
20 Appeals which upheld the two convictions.

21 Now, a motion for--

22 **UNKNOWN PERSON ON PHONE:** Okay, sir, the
23 inmate is back at that extension and I'll connect you now.

24 **THE COURT:** Thank you very much.

25 **MR. PRICE:** Hello.

1 **THE COURT:** Mr. Price, this is Judge Donald
2 Poppy here in the Circuit Court for Winnebago County,
3 Wisconsin. Your attorney, Mr. Lichstein, is present as is
4 the Special Prosecutor Susan Karaskiewicz.

5 **MR. PRICE:** Okay.

6 **THE COURT:** And I understand now that
7 Ms. Karaskiewicz, you wish to advise the Court that as
8 Special Prosecutor you have made an investigation into the
9 facts and circumstances concerning the motion that was
10 filed on behalf of Mr. Price concerning these two
11 convictions that were entered in Case No. 94 CF 285 as
12 they concern the threat to injure a public official and
13 the delivery of marijuana charge, is that correct?

14 **MS. KARASKIEWIZ:** It is correct, Your
15 Honor.

16 **THE COURT:** All right, and what is it that
17 you have to report to the Court this afternoon?

18 **MS. KARASKIEWIZ:** Your Honor, after an
19 extensive review of the case, I have reached the
20 conclusion that Mr. Price should be permitted to withdraw
21 his plea to the threats to injure count but not the drug
22 delivery count. This decision is based on several factors
23 including:
24
25

1 1. The lack of evidence to support the original
2 charge and/or the amended charge beyond a reasonable
3 doubt.

4 2. The negligent or intentional withholding of
5 material exculpatory evidence in the form of John Doe
6 transcripts and audiotapes by the Special Prosecutor;
7 and,

8 3. Possible ineffective assistance of counsel for
9 failing to secure the exculpatory evidence that he may or
10 may not have known about.

11 The drug count has ample evidence to support the
12 conviction and no discovery problems of which I'm aware,
13 so I will not concede that count.

14 With regard to Mr. Price's motion to withdraw plea, I
15 concur with Mr. Lichstein that the defendant is entitled
16 to withdraw his plea to the threats to injure count
17 because:

18 1. The suppressed exculpatory evidence meets the
19 standards for a new trial based on newly discovered
20 evidence under State v. McCallum at 208 Wis. 2d 463, 1997
21 and State vs. Harris, 2004, Wis. 64.

22 2. The State induced Price to plead by withholding
23 the exculpatory evidence in violation of Price's due
24 process and statutory discovery rights; and,

25

1 3. The interests of justice require plea withdrawal
2 and that the Judgment be vacated.

3 The material exculpatory evidence consisted of John
4 Doe testimony of Darrin Beverly as elicited by Special
5 Prosecutor Vince Biskupic.

6 1. Darrin Beverly's first meeting with Biskupic and
7 Investigator Steve Wichman on May 20, 1994, as referred to
8 in Defense Exhibit No. 7, where Beverly specifically asks
9 Biskupic, as noticed by Investigator Wichman, quote,
10 Beverly would like to have Deputy DA contact Assistant
11 Milwaukee District Attorney Fran Siegel because he would
12 like possible consideration on a review of his sentence,
13 end quote. It was also noted that Darrin Beverly
14 approached Lieutenant Dittman at the institution and
15 wanted consideration for disciplinary cases against him,
16 if he provided evidence against Mr. Price. This was also
17 later discovered.

18 2. Darrin Beverly's testimony during a subsequent
19 John Doe hearing on November 3, 1994, in which the
20 following question and answer went back and forth:

21 Question by Mr. Biskupic: Quote, is it correct that
22 you were cooperating with those officers just because of
23 the concerning nature of the information that you felt you
24 received from Mark Price, end quote?

25 Answer: Correct.

1 Question: At no time did you ask for any special
2 favors, did you?

3 Answer: No.

4 Question: In fact, you have not been given any
5 special favors in order to cooperate with the officers?

6 Answer: No.

7 3. Information about Beverly's false testimony was
8 not provided to Price or his attorney before that plea was
9 taken.

10 4. After Price's conviction, Biskupic did, in fact,
11 take direct action to grant Beverly's request for a
12 sentence reduction, the very request Biskupic had claimed
13 Beverly never made. Biskupic contacted both Beverly's
14 attorney, Charles Jones, and Milwaukee County ADA Fran
15 Siegel, the ADA who had prosecuted Beverly. And that's in
16 Defense Exhibit No. 15 and 8. In both letters
17 Mr. Biskupic again claimed that Beverly had not asked for
18 consideration before assisting in the investigation of
19 Price.

20 5. To Jones: Quote, Mr. Beverly did not ask for
21 assistance seeking a sentence modification before his
22 cooperation with law enforcement on the Winnebago County
23 case, end quote. Siegel's affidavit to the Court in
24 Milwaukee is quoted as saying, District Attorney Vince
25 Biskupic informed your affiant that Defendant Beverly was

1 truthful and did not ask for any consideration before
2 giving all this information to the Winnebago County law
3 enforcement officers, end quote. In fact, Beverly's
4 sentence was reduced by the Milwaukee Judge by five
5 years. Beverly was serving a sentence for armed robbery,
6 and I believe, perhaps, an attempted homicide. He had a
7 very long, extensive, violent record.

8 7. Evidence that Beverly also was in trouble in
9 prison and wanted consideration from prison officials,
10 like I said earlier, came to light from a defense
11 investigator.

12 Secondly, audiotapes of Terry Mangum and Deputy
13 Woods. Terry Mangum was the person who was delivering
14 marijuana in the community through Mark Price's
15 direction. Deputy Woods acted in an undercover capacity
16 as the buyer for Terry Mangum.

17 The State had audiotapes that were not disclosed.
18 They included cryptic discussions where Woods was trying
19 to get Mangum to commit to this hit man arrangement that
20 Beverly said Price was proposing. Although Mangum and
21 Woods agree on the drug deal, Woods tries repeatedly to
22 elicit statements from Mangum that Price, as the drug
23 supplier, wanted to pay Woods to set up another type of
24 deal, end quotes.

25

1 Mangum appears confused by this. In the transcripts,
2 Woods says, okay, my, uh did you relay the other message
3 about the person I had who can help them out on their
4 other problem? Mangum: Yeah, and they didn't really know
5 what I was talking about. That's Defense Exhibit 20 at
6 Line 6.

7 Another conversation again after discussing a drug
8 deal:

9 Specifically Woods says, okay, I gotta get low. But
10 I need to set some other stuff up here. The um, the five
11 and five deal.

12 Mangum: Yeah, I mentioned that to him and he had no
13 idea what I was talking about.

14 Woods: He had no idea what you were talking about?

15 Mangum: Mm-Mm. He thought this was pretty weird and
16 all this and that. Defense Exhibit 20 at 10.

17 Nowhere on the tapes, in the transcripts that I
18 reviewed, was there any statement implicating Price in a
19 plot to murder Paulus. Further, Mangum was arrested via a
20 warrant that was issued by a Circuit Court Judge. After
21 being questioned and providing a statement, she was
22 allowed to leave the police station without the warrant
23 being vacated by a Judge. Instead, Biskupic authorized
24 her release, which he had no authority to do.

25

1 A few weeks later Biskupic sent a letter to Mangum's
2 attorney, copying it to Price's attorney. The letter
3 offers a plea bargain in which Mangum would plead to the
4 charge of party to the crime of delivery of marijuana, the
5 State would concur with the PSI recommendations. Mangum
6 would continue to cooperate against Price and the State
7 would not file any additional charges against her or offer
8 any penalty enhancers related to her conduct.

9 In fact, Biskupic never did charge Mangum with
10 anything. While it is well within his discretion to do
11 so, Price's attorney was led to believe that Mangum was
12 going to be convicted also. Giving Mangum so much
13 consideration is exculpatory and her credibility could
14 easily have been challenged.

15 Audiotapes of Mr. Price and Mr. Beverly, as seen in
16 Defense Exhibit 21, authorities arranged to have Beverly
17 wired to secretly record conversations against Price to
18 substantiate his claims of conspiracy to commit homicide.
19 On the recordings there is a lot of discussion about drug
20 dealing but absolutely no mention at all of a plot to kill
21 Joe Paulus, even with Beverly trying to make that happen.
22 Tapes were not provided to Price's attorney. Beverly
23 characterized the drug dealing as wed to the plot to kill
24 Paulus and yet there is no mention on the tapes. It is
25 this absence of discussion which would corroborate these

1 allegations by an inmate, who has a terrible record and
2 lacks credibility; that was withheld and thus meets the
3 standards for a new trial on newly discovered evidence. I
4 believe he is entitled to withdraw his plea on the threats
5 to injure in order to avoid a manifest injustice.

6 Manifest injustice occurs when evidence is discovered
7 after conviction, and the affidavit of
8 Attorney John Wallace at Exhibit 13 talks about that and
9 Mr. Price's exhibit or affidavit, Exhibit 14, also speaks
10 to that.

11 The defendant was not negligent in seeking the
12 evidence. John Doe secrecy orders and sealed testimony
13 prohibited him from doing so unless they were released and
14 opened. The tapes were in the physical possession of the
15 State. Mr. Wallace did file a Discovery Demand.

16 Evidence is not merely cumulative here. Mr. Price
17 knew nothing about the evidence and went only on the
18 statement of Beverly and possibly two other inmates.
19 There was an inmate named Ray Weber who wrote numerous
20 letters to Mr. Paulus and then Mr. Biskupic desperately
21 asking for commuted sentences for his assistance. He was
22 putting it right out there; he wanted something for his
23 assistance. And this man named Leland Rick, in this case
24 known as Ricky, he was a friend of Mr. Beverly, grew up
25 with Mr. Beverly and who claims the same thing Mr. Beverly

1 did, but it was in a timeline such that it appears that it
2 was after Mr. Price was on to Mr. Beverly, that he had a
3 sense that Mr. Beverly was trying to set him up and was
4 not talking to Mr. Beverly any more and then Leland Rick
5 comes in and says the same thing. Again, another man who
6 lacked credibility, had a very extensive record; many of
7 these people came forward, had very violent, extensive
8 records.

9 Manifest injustice then also happens when the new
10 evidence creates a reasonable probability that a different
11 result would be reached in trial; and clearly, you know,
12 basically a competent defense attorney would have had a
13 field day at trial in this case and a reasonable jury
14 would have acquitted Mr. Price. So, I think it's a
15 reasonable probability that that would have happened.

16 With the ability to challenge credibility and sheer
17 lack of credible evidence and exculpatory nature of the
18 evidence withheld, it's highly unlikely a jury could
19 convict. Also, manifest injustice occurs when a guilty
20 plea is induced by the deprivation of a constitutional
21 right. And he had a right under Brady v. Maryland to
22 receive exculpatory evidence that was material to his
23 case.

24 I don't have an opinion on the conflict of interest
25 argument that counsel makes, but I must correct something

1 Mr. Biskupic is quoted as saying in an article dated
2 October 26, 2004, in the Northwestern, here at the local
3 paper. Contrary to any evidence I had before me and
4 confirmed with Mr. Lichstein, there was no confession in
5 this case. Obviously, there was no confession in this
6 case; we wouldn't be having this discussion here, but that
7 was quoted in the paper. He said there was so much
8 evidence in this case and there was a confession. There
9 was no confession to either the drug case or this case and
10 clearly they wouldn't have reduced it to a five year
11 felony if there was a confession to kill Mr. Paulus.

12 I believe the interest of justice argument carries
13 the day because it is probable that justice has been
14 miscarried in this case. In the alternative, I believe
15 that the Court might be able to find ineffective
16 assistance. I don't really want to go there on that
17 because that argument is for Mr. Lichstein. It does
18 follow that the counsel knew or should have known about
19 the above-described exculpatory evidence. There is
20 reference in the police reports to Mr. Beverly's request
21 for consideration. That's one of the first police
22 reports. So, he had inkling. Now, he didn't have any
23 inkling-- Mr. Wallace couldn't have had an inkling that
24 in a secret John Doe here Mr. Beverly would say he never
25 asked for that consideration or the prosecutor would

1 elicit that type of testimony given the fact that the
2 prosecutor was a witness to the original statements at the
3 prison. So, that's why I hesitate to offer that as a
4 possibility.

5 There is also obviously reference to -- there is some
6 reference to some audiotapes. And even though the John
7 Doe hearing was confidential, perhaps when Mr. Biskupic
8 did send some transcripts to counsel after he got them
9 open to the public, perhaps counsel should have moved to
10 compel for the others. Again, it is always, however, the
11 prosecutor's duty to promptly disclose material,
12 exculpatory evidence and not the burden of the Defense
13 Attorney to guess as to it's existence. Thank you, Your
14 Honor.

15 **THE COURT:** All right, I think as a
16 procedural matter that the Court cannot address the issue
17 of any ineffective assistance of counsel without having
18 Mr. Wallace testify. I think he's afforded that
19 opportunity.

20 **MS. KARASKIEWIZ:** I agree.

21 **THE COURT:** Professional well-being.

22 **MS. KARASKIEWIZ:** And I agree. The only
23 reason I bring it up, it's in their motion. I tried to
24 address everything that was in his motion, but I think
25 ultimately it comes down to the lack of disclosure, which

1 is an affirmative obligation by the prosecution.

2 **THE COURT:** All right. Just so the record
3 is clear, Counsel, it's my understanding that you have a
4 considerable amount of professional experience as a public
5 prosecutor, is that correct?

6 **MS. KARASKIEWIZ:** I was a prosecutor
7 employed by the State for eighteen and a half years. I
8 was last the Deputy District Attorney in Kenosha for
9 almost ten years and now doing special prosecution in the
10 State as well as criminal defense on my own.

11 **THE COURT:** Obviously, you've had
12 considerable trial experience.

13 **MS. KARASKIEWIZ:** Over 150 Jury Trials and
14 I've argued before the Supreme Court, and I have lectured
15 at DA conferences and things around the State.

16 **THE COURT:** All right. But it is your
17 opinion, however, then that there is a significant amount
18 of evidence which corroborates and supports the finding of
19 guilt as it concerns the conspiracy charge or being party
20 to the crime of delivery of marijuana.

21 **MS. KARASKIEWIZ:** Oh, yes. The evidence
22 that was not at the defendant's disposal before his plea
23 goes straight to the ultimate threats to injure
24 conviction. There was ample evidence and the law
25 enforcement officers did a very fine job in this in

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securing -- making the deliveries happen so they could corroborate it. There was ample evidence of that.

THE COURT: All right.

MS. KARASKIEWIZ: So I don't think it speaks to that at all.

THE COURT: Okay. Mr. Lichstein, it appears, though, the Court is going to grant the defendant's motion to vacate the conviction of threat to injure a public official and to withdraw his plea. How does-- Should that occur, which it's likely to occur here in a few minutes, how is Mr. Price going to proceed with regard to the other charge, the drug charge, which resulted in the nine year consecutive sentence?

MR. LICHSTEIN: Your Honor, after discussing the matter with Mr. Price, we've agreed that-- We've entered into an agreement with Ms. Karaskiewicz. As she mentioned, the charge of threat to injure will be vacated and the five year consecutive sentence on that count will go away.

The claims as to the other count, which is the drug case, will remain and we will withdraw our argument that Mr. Price is entitled to withdraw his plea as to those counts. Your Honor, I did have a few very short additional things I wanted to put on the record. I can

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wait for a moment, if you prefer, or if you like me to go ahead now?

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THE COURT: All right, why don't you go ahead.

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MR. LICHSTEIN: I wanted to put on the record how my organization became involved in the case. We were contacted in 2004 by the former Winnebago County District Attorney William Lennon; and he informed us that his investigation into this case, along with Assistant District Attorney Mike Balskus, had revealed that there were some real problems with the way this was prosecuted. And it's very unusual for our program to receive information like that; and the information went even further, that the former District Attorney asked us to become involved and take a look and perhaps represent Mr. Price.

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So, we did that, and we reviewed the materials, interviewed Mr. Price, and we came to the conclusion, just as Ms. Karaskiewicz had, that there was a lot wrong here. There was significant prosecutorial misconduct and we determined that a motion was warranted. And, of course, now we've obviously been working with Ms. Karaskiewicz to figure out what she believes a fair resolution is. And I think she hit it right on the head as to her comments on

1 the threats case. And I want to-- I guess I want to
2 applaud both the former Winnebago County District
3 Attorney's Office, Mr. Lennon and Mr. Balskus, for looking
4 into this and finding out that something went wrong and
5 also Ms. Karaskiewicz for taking an objective view of it
6 and coming to what I think is a very fair view of the
7 case.

8 And, finally, I just want to point out that
9 throughout this whole process Mr. Price has been a model
10 client. He has been polite and helpful, and I couldn't
11 have asked for a better client; and I'm glad to say I
12 think he's been vindicated in part by this agreement.
13 What he's been saying all along is that as to this case
14 these prosecutors engaged in some misconduct to pin some
15 trumped-up charges on him and I'm glad to see that that
16 point of view has been vindicated to some extent here.
17 And that's all I have to say.

18 **MR. PRICE:** Could I ask a question here?

19 **THE COURT:** Yes, Mr. Price, go ahead if you
20 wanted to tell the Court something. This is your
21 opportunity.

22 **MR. PRICE:** I had-- Obviously, being
23 accused of selling drugs to raise money to kill the
24 District Attorney is pretty serious; and the problem that
25 I have is, you know, I understand you may not be able to

1 expunge it from my record out there, but the prison in
2 here has it in here, and it's what's keeping me in a
3 maximum institution. And I think if we're going to get
4 rid of the threat charge, that there should be some type
5 of a Court order or something to have it expunged from my
6 prison file, because they're using it as -- you know, as
7 what it is. It's a serious thing, and so they hold that
8 against me saying, well, look what he was doing while he
9 was in prison; he was selling drugs to kill the District
10 Attorney. Well, that's not true. So, I shouldn't be
11 subjected to more crap, basically, from the institution
12 based on something that wasn't true to begin with and that
13 hopefully the Court is going to be even vacating. So,
14 that's one of the things.

15 And the other one is I paid -- they took \$70 for the
16 surcharge on it and it takes a long time when you're
17 working for pennies for hours and it took me a few years
18 to pay it off, the prison charges; and I would like a copy
19 of these transcripts, if possible, from this hearing.

20 **THE COURT:** I'm sure Mr. Lichstein can
21 arrange for a transcript of this proceeding. I would like
22 to thank our Special Prosecutor, Ms. Karaskiewicz, for her
23 professionalism and objectivity in this matter. I
24 perfectly well understand why prior judges assigned to
25 this case acted the way they did, because of the way the

1 issues were presented. I don't think anyone presented the
2 issues quite as clearly as they have been presented to
3 this Court now. I'm satisfied, based on our Special
4 Prosecutor's representations to the Court that, in fact,
5 it is in the interest of justice that the defendant be
6 allowed to withdraw his plea on the first -- or, excuse
7 me, the second count of the Second Amended Information in
8 this matter.

9 The Court will vacate that conviction and I'm going
10 to direct, Mr. Lichstein, that you prepare an order to
11 that effect; and that order shall contain as one of the
12 reasons for the allowance of this withdrawal of plea,
13 vacation of the Judgment of Conviction, is because it is
14 in the manifest interest of justice based upon the facts
15 revealed to this Court. I think then that will provide at
16 least some indication to the correctional authorities as
17 to what has occurred, and it might set Mr. Price's prison
18 record straight. It is my understanding he's not eligible
19 for parole on the murder conviction until 2022, is that
20 correct?

21 **MR. LICHSTEIN:** Mr. Price, do you know the
22 exact date?

23 **MR. PRICE:** '26. 05-22-26.

24 **THE COURT:** As to the level of confinement,
25 I think, Mr. Price, that is the extent to which the Court

1 can do because the Judge, of course, does not have the
2 authority or power to indicate to Department of
3 Correctional authorities as to the level of confinement.
4 There are administrative procedures that you might have to
5 follow.

6 MR. PRICE: As long as the record is
7 straight that they know that this was-- That's one of the
8 reasons I need the transcript. They have a sentence --
9 copy of the sentencing transcripts from when I got
10 sentenced on that charge and the drug charge, so that's
11 what they're going by, and they need something else to
12 replace that to show, hey, this doesn't even exist any
13 more; this is gone.

14 THE COURT: All right. I believe also that
15 the order that you prepare, Mr. Lichstein, should then
16 indicate that the motion as to the drug charge is deemed
17 withdrawn, and I would like to have it dismissed on its
18 merits.

19 MR. LICHSTEIN: Oh, certainly, the motion
20 as to the drug charge?

21 THE COURT: Yes.

22 MR. LICHSTEIN: Yes.

23 THE COURT: All right. Because there
24 should be some finality to this matter.

25 MR. LICHSTEIN: Yes, absolutely, Your

1 Honor.

2 THE COURT: All right. Anything else that
3 we should place on the record?

4 MR. PRICE: Could I bring up one thing?

5 THE COURT: Yes, sir.

6 MR. PRICE: I wanted to find out if you're
7 going to reimburse the \$70 surcharge.

8 THE COURT: Well, I think what's going to
9 happen, Mr. Price, as soon as an Amended Judgment of
10 Conviction is submitted by the Winnebago County Clerk to
11 the Department of Corrections, that surcharge will be
12 taken off then because it will be an Amended Judgment of
13 Conviction and I think you're going to have to ask
14 somebody to send you your money back.

15 MR. PRICE: Okay.

16 THE COURT: That would only make sense,
17 sir.

18 MR. PRICE: On the drug charge, the way it
19 was sitting, they imposed a fine on it but they said that
20 the fine had to be paid before I'm released from prison.
21 I don't have no way of paying it before I'm released,
22 otherwise I would be given additional time. The original
23 plea agreement was for 14 years maximum. So the State's
24 violating a plea agreement by asking for additional time
25 in lieu of the fines that they knew I couldn't pay. If

1 the fine is going to stay in place, I should be afforded
2 the opportunity to pay the fine after I'm released from
3 prison so I don't have to serve more time because of my
4 inability to pay it while I'm in prison.

5 **THE COURT:** All right. Well, these charges
6 were all before Truth-in-Sentencing and I'm assuming then
7 when you're eligible for mandatory release you'll be able
8 to work and pay the fine. The record is closed then.
9 Thank you very much.

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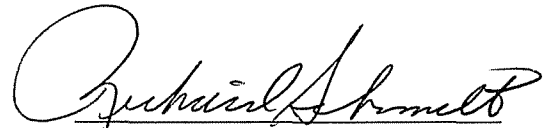
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REPORTER'S CERTIFICATE

I, Richard Schmidt, official reporter, being duly appointed and qualified, do hereby certify that the within and foregoing is a true and complete transcript of my Shorthand notes, Stenograph, taken at the time of the Motion Hearing and the whole thereof.

Dated at Oshkosh, Wisconsin - July 26, 2007.



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