

State's delay to charge defendant in adult court infringed due process rights

A delay in processing the complaint until after the defendant's 17th birthday leads to dismissal of felony charges.

By **Joe Forward**, legal Writer, State Bar of Wisconsin

Sept. 20, 2010 – A Wisconsin appeals court in Door County dismissed burglary and bail jumping charges against a defendant after finding the district attorney's office intentionally delayed charging the defendant to avoid juvenile jurisdiction.



In addition, the court found that defendant's appellate counsel violated Rules of Appellate Procedure by failing to include record citations in defendant's appellate brief. The appeals court fined the defendant's appellate counsel \$200 for the violation.

In 2008, the state indicted Drew Bergwin on burglary and felony bail jumping charges three days after his 17th birthday, and he pled no contest. The Door County circuit court denied Bergwin's motion to dismiss based on intentional delay. Under Wisconsin law, the juvenile court has jurisdiction over persons under the age of 17 at the time the complaint is filed.

In *State v. Bergwin*, 2009AP1151-CR & 2009AP1152-CR (Sept. 14, 2010), the appeals court dismissed all charges on the ground that the state intentionally delayed filing charges in order to avoid juvenile jurisdiction.

In April of 2008, an associate implicated Bergwin in a series of Door County burglaries. The associate was charged in the burglaries 16 days later. But the state waited 56 days to charge Bergwin, and state presented no evidence that delay was the result of ongoing investigation or problems locating the defendant.

The police investigator testified that his investigation was complete approximately 45 days before Bergwin turned 17 years old, and there was evidence that the district attorney's office was aware of Bergwin's birthday and intended to charge him as an adult.

"The State's actions circumvented the statutory juvenile justice process and, in turn, abrogated Bergwin's right to due process of law," the appeals court wrote.

The court also sanctioned Bergwin's appellate counsel for failure to include record citations in the appellate brief in violation of Wis. Stat. Rule 809.19(1)(d)-(1)(e).

"[F]ailure to provide record citations ... seriously hampers our ability to efficiently resolve the appeal" and "does a disservice to the client, too, as it precludes any challenge on reconsideration to the facts stated in the opinion," the court explained.

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