

SUPREME COURT OF WISCONSIN

State v. Nhia Lee

2022 WI 32 (Wis. 2022) · No. 2019AP221-CR · Decided May 24, 2022

SUMMARY

The Wisconsin Supreme Court dismissed as improvidently granted Nhia Lee’s petition for review of a Court of Appeals decision concerning delays in holding a preliminary examination and the appointment of counsel. The Court of Appeals had ordered dismissal of the criminal complaint without prejudice for lack of personal jurisdiction. A concurrence and dissent discussed the appropriate remedy and systemic issues involving appointed counsel for indigent defendants.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Per Curiam; Rebecca Grassl Bradley, J.; Anette Kingsland Ziegler, C.J.; Brian Hagedorn, J.; Ann Walsh Bradley, J.; Rebecca Frank Dallet, J.
JURISDICTION	Wisconsin
DECIDED	May 24, 2022
DOCKET	2019AP221-CR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Nhia Lee petitioned the Wisconsin Supreme Court for review of a published Wisconsin Court of Appeals decision reversing the circuit court's orders denying his motion to dismiss the criminal complaint and remanding with directions to dismiss the complaint without prejudice. The Supreme Court dismissed the review as improvidently granted.
STANDARD OF REVIEW	Not expressly stated by the per curiam disposition. The separate opinions discuss review of the circuit court's discretionary extension of the statutory preliminary-examination deadline and the appropriate remedy for an untimely preliminary examination.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion, but the court issued no merits holding because review was dismissed as improvidently granted.
PARTIES	Nhia Lee v. State of Wisconsin

TOPICS

criminal procedure

preliminary hearing

right to counsel

appellate procedure

remedies

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether the Wisconsin Supreme Court should decide the issues raised in Lee's petition for review or dismiss the review as improvidently granted.
2. Whether the failure to hold Lee's preliminary examination within the statutory ten-day period required dismissal with prejudice or dismissal without prejudice for lack of personal jurisdiction.
3. Whether the delay in holding the preliminary examination implicated Lee's speedy-trial, right-to-counsel, or due-process claims.
4. Whether the Wisconsin Supreme Court should use its superintending authority to require circuit courts to appoint counsel at county expense when State Public Defender counsel is not timely available.

KEY QUOTATIONS

“After reviewing the record and the briefs, and after hearing oral arguments, we conclude that this matter should be dismissed as improvidently granted.” (2022 WI 32, ¶1)

“By the Court.—The review of the decision of the court of appeals is dismissed as improvidently granted.” (2022 WI 32, ¶1)

“the correct remedy for failing to hold a timely preliminary examination is dismissal without prejudice for lack of personal jurisdiction.” (2022 WI 32, ¶9)

FACTUAL BACKGROUND

Lee was charged with felony drug and identity-theft offenses and remained in custody while counsel was being sought through the State Public Defender's Office. The circuit court and court commissioners repeatedly extended the ten-day statutory deadline for his preliminary examination, often over his objections, because counsel had not yet been appointed. Lee remained in custody for 113 days before the preliminary examination occurred, including 101 days before counsel was appointed.

PROCEDURAL HISTORY

The Marathon County circuit court denied Lee's motion to dismiss the criminal complaint. The Wisconsin Court of Appeals reversed and remanded with directions to dismiss the complaint without prejudice. The Wisconsin Supreme Court granted review but, after reviewing the record and briefs and hearing oral argument, dismissed the matter as improvidently granted.

DISPOSITION

dismissed

CASES CITED

- State v. Lee, 2021 WI App 12, 396 Wis. 2d 136, 955 N.W.2d 424
- Koschkee v. Evers, 2018 WI 82, 382 Wis. 2d 666, 913 N.W.2d 878
- Application of Sherper's, Inc., 253 Wis. 224, 33 N.W.2d 178 (1948)
- State ex rel. Wis. State Dep't of Agric. v. Aarons, 248 Wis. 419, 22 N.W.2d 160 (1946)
- State v. Selders, 163 Wis. 2d 607, 472 N.W.2d 526 (Ct. App. 1991)
- Armstrong v. State, 55 Wis. 2d 282, 198 N.W.2d 357 (1972)
- Crummel v. State, 46 Wis. 2d 348, 174 N.W.2d 517 (1970)
- State ex rel. Klinkiewicz v. Duffy, 35 Wis. 2d 369, 151 N.W.2d 63 (1967)
- Hennessy v. Wells Fargo Bank, N.A., 2022 WI 2, 400 Wis. 2d 50, 968 N.W.2d 684
- Green Cnty. Dep't of Human Servs. v. H.N., 162 Wis. 2d 635, 469 N.W.2d 845 (1991)
- City of Eau Claire v. Booth, 2016 WI 65, 370 Wis. 2d 595, 882 N.W.2d 738
- State v. Williams, 198 Wis. 2d 516, 544 N.W.2d 406 (1996)
- Gerstein v. Pugh, 420 U.S. 103 (1975)
- County of Riverside v. McLaughlin, 500 U.S. 44 (1991)
- State v. Koch, 175 Wis. 2d 684, 499 N.W.2d 152 (1993)
- Blackledge v. Allison, 431 U.S. 63 (1977)
- Douglas County v. Edwards, 137 Wis. 2d 65, 403 N.W.2d 438 (1987)
- In re Petition to Amend SCR 81.02, 2018 WI 83
- In re Modification of Emeritus Status, S. Ct. Order 20-06, 2021 WI 19
- In re Petition to Repeal and Recreate SCR Ch. 50, S. Ct. Order 20-04, 2021 WI 20