

STATE OF WISCONSIN

CIRCUIT COURT
Branch 4

DANE COUNTY

STATE OF WISCONSIN,

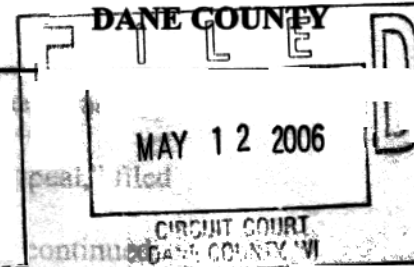
Plaintiff,

vs.

Case No. 02 CF 2453

SCOTT R. JENSEN,

Defendant.



DEFENDANT JENSEN'S MOTION FOR LIMITED STAY OF EXECUTION

Defendant Scott Jensen, by his appellate counsel, Skadden, Arps, Slate, Meagher & Flom, LLP, and Friebert, Finerty & St. John, S.C., respectfully moves the Court, pursuant to Section 973.15(8), Wis. Stats., for a limited stay of the execution of his sentence so that this Court may fully consider his motion for continued release on bond pending appeal and, if necessary, immediate appellate review of that bond ruling can occur. Defendant has, by separate motion, moved this Court for bond pending appeal in accordance with Sections 809.31 and 969.01, Wis. Stats.

Section 973.15(8) provides that “[t]he sentencing court may stay execution of a sentence of imprisonment” for, *inter alia*, “legal cause” for a period of “not more than 60 days.” As set forth in the Judicial Council Note to the provision:

Subsection 8 [was] added to specify the circumstances under which execution of a sentence of imprisonment may be stayed. Paragraph (a) references the rule of *Reinex v. State*, 51 Wis. 152 (1881) and *Weston v. State*, 28 Wis. 2d 136 (1965), whereby execution can be stayed for ‘legal cause,’ *such as during the pendency of an appeal*. . . .

Paragraph (c) is new. It allows the court *to delay the commencement of a sentence for up to 60 days.*”

See §973.15, Wis. Stats., Judicial Council Note 1998 Main Volume (emphasis added).

As set forth in “Defendant Jensen’s Motion For Bond Pending Appeal,” filed contemporaneously herewith, Mr. Jensen presents a compelling basis for continued release on bond pending appeal. He readily satisfies each and every statutory factor required for continued release.

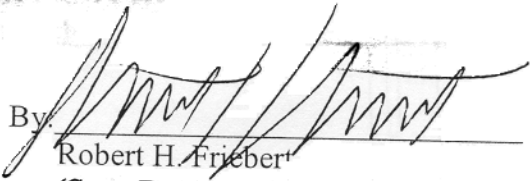
Mr. Jensen has comported with all requirements of his release on bond pre-trial, during trial, and post-conviction. He presents no risk of non-appearance or danger to the community, and, as set forth in his Motion For Bond Pending Appeal, his substantive appeal will present substantial appellate issues addressing fundamental error.

In this light, there is no meaningful justification for Mr. Jensen’s incarceration prior to appropriate consideration and resolution of his motion for bond pending appeal. Section 809.31(2) explicitly provides that the “trial court shall promptly hold a hearing on the motion of the defendant.” See § 809.31(2), Wis. Stats. The statute also specifies a procedure for expedited appellate review of an order regarding bond pending appeal. See § 809.31(5). Based on these statutory provisions, it is anticipated that any issues relating to Mr. Jensen’s continued release on bond pending appeal will be resolved within the 60 day period contemplated by Section 973.15(8)(a)(3).

WHEREFORE, Defendant Scott Jensen respectfully requests that the Court enter a limited stay of the execution of his sentence, in accordance with Section 973.15(8), Wis. Stats., so that this Court may fully consider his motion for continued release on bond pending appeal and, if necessary, immediate appellate review of that bond ruling can occur.

Dated at Milwaukee, Wisconsin, this 12 day of May, 2006.

By



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(State Bar No. 1009206)
Matthew W. O'Neill
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