

STATE OF WISCONSIN

CIRCUIT COURT
Branch 12

DANE COUNTY

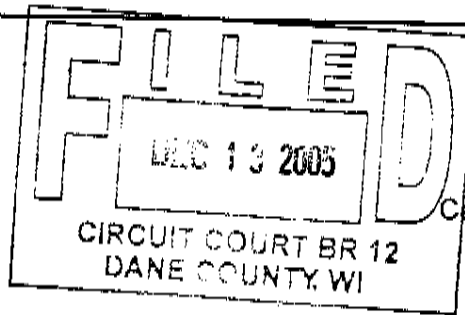
State of Wisconsin,

Plaintiff

vs.

Charles Chvala

Defendant



Case No. 02 CF 2451

ORDER DENYING MOTION FOR RECUSAL

The defendant has moved for recusal based upon December 6, 2005 correspondence from the court to Assistant District Attorney Kurt Benkley in which the court expressed the view that the court should consider whether restitution should be ordered in this matter. A memorandum submitted with the defendant's motion asks the court to consider the possibility of subjective bias against the defendant and further suggests that the December 6, 2005 correspondence is an objective demonstration of bias.

As to the question of subjective bias, the court has given careful thought to the matter and can state with confidence that it does not harbor any feeling of bias against the defendant. As to the question of objective bias, the December 6, 2005 letter reflects the reality that Wisconsin law governing restitution poses a somewhat unique obligation upon a court. The applicable statute states that the court "shall order the defendant to make full or partial restitution ... unless the court finds substantial reason not to do so and states the reason on the record", Sec. 973.20(1r), Wis. Stats. The law further provides that the prosecution "shall attempt to obtain from the victim prior to sentencing" the factual information that the court is

required to consider with regard to restitution, Sec. 973.20(13)(b), Wis. Stats. The court is required at least to consider restitution and it must rely upon the prosecution to present the necessary information.

The prosecution's December 2, 2005 State's Sentencing Memorandum indicates the prosecution had decided to not present factual information relevant to restitution. The court's correspondence of December 6, 2005, is a factually accurate request that the prosecution revisit that decision. It is certainly true that the parties did not discuss restitution in the plea hearing conducted October 25, 2005, but the obligation to consider restitution is a duty imposed upon the court, not the parties. That is why the court expressly advised the parties that a restitution order could be considered, transcript, page 7. In submitting the December 6, 2005 letter to the prosecution, the court was acted in a manner entirely consistent with the court's statutory duty in this proceeding. The court concludes that the letter does not demonstrate any degree of objective partiality and the defendant's motion is therefore denied.

By the Court this 13th day of December, 2005.



Judge David Flanagan

cc: Assistant District Attorney Kurt Benkley, 414-223-1929
Attorney James Olson, 608-282-6252

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