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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 30, 2011

To:

Devon M. Lee
Asst. State Public Defender
P. O. Box 7862
Madison, WI 53707-7862

Michael E. Nieskes
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following order:

2010AP387-CR

State of Wisconsin v. Gregory K. Nielsen

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

On November 9, 2011, counsel for the appellant was ordered to show cause why the court should not find that counsel violated Wis. STAT. RULE 809.19(2), with respect to counsel's certification that the appellant's appendix included that portions of the record essential to an understanding of the issues raised, including oral rulings showing the circuit court's reasoning regarding those issues. Counsel was also required to show cause why the court should not order counsel to pay \$150 as a sanction for the violation. Upon consideration of counsel's response to the November 9, 2011 order to show cause, we conclude the appendix did not comply with RULE 809.19(2), and that the Office of the State Public Defender be required to pay a \$150 sanction. See RULE 809.83(2).

The appellant's brief argued that the circuit court failed to fulfill the mandate articulated in *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, to explain the rationale for

the particular sentence imposed. The appendix included only a select portion of the circuit court's sentencing remarks; just three of the eight transcript pages that contained the circuit court's remarks. Counsel for the appellant explains that only a small portion of the circuit court's sentencing remarks were included in the appendix because the appellate issue was narrowly focused on something that should have occurred at sentencing but did not and the pages provided in the appendix were the one where the occurrence should have logically occurred. Counsel further explains that she did not blithely or negligently throw pages into the appendix but included just the transcript pages counsel earnestly believed were essential to understanding the issue raised. Counsel suggests that she and other attorneys in her office are now on notice to take a more expansive and inclusive view of the required appendix content such that future "misunderstandings or disagreements" regarding content will be minimal.

Although we appreciate that counsel deliberated on the content of the appendix, there is no reason to omit the entirety of the sentencing court's remarks when the exercise of sentencing discretion is at issue. It is long established that when reviewing a sentence, this court looks to the totality of the sentencing court's remarks. See *State v. Stenzel*, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20; *State v. Timmerman*, 198 Wis. 2d 309, 318, 542 N.W.2d 221 (Ct. App. 1995). Additionally, the decision in *State v. Bons*, 2007 WI App 124, ¶21-25, 301 Wis. 2d 227, 731 N.W.2d 376, explained the importance of providing a meaningful appendix in compliance with WIS. STAT. RULE 809.19(2), and signaled that this court intended to enforce the appendix certification rule. See also *Bons*, ¶29 (Brown, J. concurring).

The appendix to the appellant's brief was inadequate. The \$150 sanction is warranted.

Upon the foregoing reasons,

IT IS ORDERED that within thirty days of the date of this order, the Office of the State Public Defender shall pay \$150 to the clerk of this court as a sanction for the filing of an appendix that did not comply with WIS. STAT. RULE 809.19(2).

A. John Voelker
Acting Clerk of Court of Appeals