

SUPREME COURT OF WISCONSIN

Case No.: 94-2542-CR

Complete Title
of Case: State of Wisconsin,
Plaintiff-Appellant,
Anthony Hicks,
Defendant-Respondent-Petitioner.

REVIEW OF A DECISION OF THE COURT OF APPEALS
Reported at: 196 Wis. 2d 372, 539 N.W.2d 135
(Ct. App. 1995)
UNPUBLISHED

Opinion Filed: January 24, 1997
Submitted on Briefs: September 24, 1996
Oral Argument:

Source of APPEAL
COURT: Circuit
COUNTY: Milwaukee
JUDGE: STANLEY A. MILLER

JUSTICES:
Concurred:
Dissented:
Not Participating:

ATTORNEYS: For the defendant-respondent-petitioner the cause was submitted on the briefs of *Robert R. Henak* and *Shellow, Shellow & Glynn, S.C.*, Milwaukee.

For the plaintiff-appellant the cause was submitted on the brief of *Stephen W. Kleinmaier*, assistant attorney general, and *James E. Doyle*, attorney general.

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 94-2542-CR

STATE OF WISCONSIN

:

IN SUPREME COURT

State of Wisconsin,

Plaintiff-Appellant,

v.

Anthony Hicks,

Defendant-Respondent-Petitioner.

FILED

JAN 24, 1997

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

REVIEW of a decision of the Court of Appeals. *Reversed and remanded.*

¶1 DONALD W. STEINMETZ, J. This is a review of a decision of the court of appeals reversing an order of the circuit court for Milwaukee County, Stanley A. Miller, Judge, dismissing one count of a criminal complaint charging Anthony Hicks with a violation of the controlled substance tax statute.

The defendant, Hicks, argues that he has standing to raise a Fifth Amendment constitutional challenge¹ to Wis. Stats. §§ 139.87-139.96, the drug tax statutes, because he faces a criminal conviction for violation of these statutes.

¶2 In State v. Hall, No. 94-2848-CR (S. Ct. January 24,

¹ The Fifth Amendment to the United States Constitution provides, in relevant part, that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . . without due process of law . . ." U.S. Const. Amend. V. This amendment is applied to the states by U.S. Const. Amend. XIV, which states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

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1997), this court held that the drug tax stamp statute is unconstitutional. Thus, we do not reach the standing issue presented in this case, because the defendant cannot be prosecuted for being in possession of cocaine without a tax stamp. Instead, we reverse and remand to the circuit court with directions to dismiss with prejudice the drug tax stamp charge.

By the Court.—Reversed and cause remanded with directions.