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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case No. 2011AP2833-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACQUELINE R. ROBINSON,

Defendant-Appellant.

On Notice of Appeal From a Judgment of Conviction and an
Order Denying Post Conviction Relief Entered in the Circuit
Court for Milwaukee County, the Honorable Paul R. Van
Grunsvan, Presiding

REPLY BRIEF OF
DEFENDANT-APPELLANT

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CASES CITED

<i>State v. Burt</i> , 2000 WI App 126, 237 Wis. 2d 610, 614 N.W.2d 42	2
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**CONSTITUTIONAL PROVISIONS
AND STATUTES CITED**

United States Constitution

U.S. CONST. amend. V 1

U.S. CONST. amend. XIV 1

Wisconsin Constitution

Wis. CONST. art. I, § 8 1

ARGUMENT

- I. The Nine-Month Increase in Ms. Robinson's Sentence Violated Her State and Federal Constitutional Protection Against Double Jeopardy Because She had A Legitimate Expectation of Finality in the Sentence Ordered to Commence "Forthwith" and There was No Error of Law or Misstatement of Fact at the Sentencing Hearing.

The Wisconsin and United States Constitution protects a criminal defendant from being subjected to multiple punishments for the same offense. *See* U.S. CONST. amend. V, XIV; Wis. CONST. art. I, § 8. "[J]urisprudence has placed a premium on ensuring finality of judgments and not subjecting defendants to endless prosecutions or multiple punishments." *State v. Gruetzmacher*, 2004 WI 55, ¶ 23, 271 Wis. 2d 585, 679 N.W.2d 553.

An increase in a previously imposed sentence violates double jeopardy if the defendant has a legitimate expectation of finality in the sentence. *Gruetzmacher*, 271 Wis. 2d 585, ¶ 33 (citing *State v. Jones*, 2002 WI App 208, ¶ 9, 257 Wis. 2d 163, 650 N.W.2d 844). Several factors influence whether a defendant had a legitimate expectation of finality: "the completion of the sentence, the passage of time, the pendency of an appeal or the defendant's misconduct in obtaining the sentence." *Jones*, 257 Wis. 2d 163, ¶ 10 (citations omitted).

Here, as argued in her brief-in-chief, Ms. Robinson had a legitimate expectation of finality in the sentence imposed on May 10, 2011. The court ordered the sentence to commence "forthwith". Further, there was no error of law or misstatement of fact at the sentencing hearing. Nor had Mr.

Robinson engaged in misconduct. The state does not dispute that the sentence was ordered to commence forthwith and that there was no error of law or a misstatement of fact at the sentencing hearing. *See* State’s Brief, pp. 5-8. Nor does the state argue that Ms. Robinson engaged in misconduct. *See Id.*

Although Ms. Robinson had served one day of the sentence, she had a legitimate expectation of finality in the sentence that the court ordered to commence forthwith. Further, the passage of time is just one factor in this analysis.

Any argument that the court’s “reason for resentencing” undermines Ms. Robinson’s legitimate expectation of finality in the sentence fails. The court’s reason for increasing Ms. Robinson’s sentence is irrelevant to and does not impact Ms. Robinson’s own belief that the sentence imposed the day before was the final sentence in her case. Whatever misunderstanding the court had in its head about Ms. Robinson’s prior record did not undermine her expectation of finality in the sentence.

Additionally, this is not a case where the court recalled the case to clarify an obvious mistake it had made at sentencing. Instead, it held a hearing, which the state characterizes as a “resentencing hearing.”¹ At this hearing, the court did not clarify any “slip of the tongue”, such as from concurrent to consecutive sentences as in *State v. Burt*, 2000 WI App 126, ¶ 7, 237 Wis. 2d 610, 614 N.W.2d 42. Nor did the court correct an obvious error in the pronouncement of sentence to conform to its clearly stated intent about the length of the sentence as in *State v. Willett*, 2000 WI App 21, ¶ 14, 36-38, 238 Wis. 2d 621, 618 N.W.2d 881. Rather, the record suggests that following the sentencing hearing, the

¹ State’s brief, p. 8.

court reflected upon the imposed sentence, checked Ms. Robinson's prior record, which had been correctly stated at the first sentencing hearing, and reweighed the facts. The premium placed on finality of judgments does not allow for increases in sentences under these circumstances.

CONCLUSION

For all of the above reasons and the reasons stated in her brief-in-chief, Ms. Robinson requests that this court reverse the circuit court's denial of her post conviction motion and remand this case with an order that the circuit court vacate the sentence imposed on May 11, 2011 and reinstate the original sentence imposed on May 10, 2011.

Dated this 4th day of May, 2012.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 662 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 4th day of May, 2012.

Signed,

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