

State of Wisconsin Supreme Court

2021AP2053CR

State of Wisconsin
Plaintiff-Respondent

v.

Ricky Rodriguez
Defendant-Appellant

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OF WISCONSIN

Appeal from The Circuit Court of Sauk County
The Honorable Michael P. Screnock, presiding

Petition For Review

Statement of Issues

Where there has been a determination by a trial judge to put a defendant on probation, may he thereafter, following the revocation of that probation order the sentence to commence sometime in the future, consecutive to a term imposed following the creation of a probation status and commencing prior to revocation of the probation.

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Reason to Accept Review

Because the sentencing problem posed in Mr. Rodriguez case is one that is likely to be repeated in numerous criminal cases, and because the sentencing procedure and authority in criminal cases is an issue of a public character and of great public importance to courts, defenders, and prosecutors. The circuit court's authority for determining proper sentences is governed by Wis. Stat. Ch. 973. Resolving Mr. Rodriguez contentions on petition of review requires the Supreme Court to interpret and apply the sentencing statutes to the facts at hand.

Statement of the Case

IN Mr. Rodriguez case (2015CM318), Mr. Rodriguez in June 2015, was charged with MISDEMEANORS in SAUK County. After Mr. Rodriguez was CONVICTED on two counts, the circuit court withheld sentence and placed Mr. Rodriguez on probation, in February 2017 (Plea + Sent. 7:20-25). Subsequently on May 14, 2017, Mr. Rodriguez committed felony offenses that were charged in Milwaukee County CASE No. (2017CF2397), and his probation was revoked. A REVOCATION ORDER AND WARRANT signed and dated June 18, 2018, stated that Mr. Rodriguez return to the NOTED WISCONSIN COURTS for sentencing pursuant to 973.10 (2). The matter was set for a sentence after revocation hearing on July 19, 2018. The State failed to produce Mr. Rodriguez for the sentencing after revocation hearing set for July 19, 2018, while Mr. Rodriguez was INCARCERATED at the Milwaukee County Jail from May 14, 2018 until September 10, 2019. On July 23, 2019 AN ARREST WARRANT was issued for Mr. Rodriguez. On August 23, 2019, Mr. Rodriguez was sentenced on CASE No. (2017CF2397), and was received at Dodge Correctional Institution on September 11, 2019. Mr. Rodriguez filed a request for prompt disposition on September 26, 2019, indicating that he was INCARCERATED at Dodge Correctional Institution. On October 8, 2019, a sentencing after revocation was held. The court then asked the State's recommendation and the State's position was to have Mr. Rodriguez revocation ran concurrent with Milwaukee County

CASE 2017CF2397, (Sent. After Rev. 5:7-25), (Sen. After Rev. 6:1-10). The court then ordered such sentence be RAN CONSECUTIVE After Mr. Rodriguez completion of his 2017CF2397 case. (Sent. After Rev. 8:21-24), (Sent. After Rev. 10:1-6). Mr. Rodriguez then filed a motion to reconsider on October 14, 2021. On October 15, 2021, the State responded to Mr. Rodriguez motion to reconsider. On November 18, 2021, the circuit court denied Mr. Rodriguez motion to reconsider. A timely Appeal was filed. On June 16, 2022, the court of Appeals Affirmed.

Argument

The circuit court, nor the court of Appeals Addressed where there has been a determination by a trial judge to put a defendant on probation, may be thereafter, following the revocation of that probation order the sentence to commence sometime in the future.

Wis. Stat. 973.10(2) has been Amended to clarify that, upon revocation of probation of an offender from whom sentence was originally withheld, the court must impose sentence in accordance with Wis. Stat. 973.15. That section now permits the court to order that any sentence be concurrent with or consecutive to any sentenced impose at the same time or previously.

Mr. Rodriguez does not dispute the circuit court

had the Authority to order the sentence in SAUK County CASE 2015CM318 to be consecutive to Milwaukee County CASE 2017CF 2397, Mr. Rodriguez Argues, Wis. Stat. 973.15 (2)(A), does not state nor Authorizes that such sentence to be completed in the future upon completion of his 2017CF 2397 sentence.

IN Mr. Rodriguez situation, he was sentenced to prison for a separate offense which intervened between his original order of probation and the subsequent revocation of probation. Case No. 2017CF2397 sentence newly imposed or allowed to go into effect cannot begin on the date Mr. Rodriguez entered prison.

It is the Argument of Mr. Rodriguez that his 2015CM318 sentence should have commenced immediately after entry to prison with his 2017CF2397 sentence to follow consecutively.

Wis. Stat. 973.10(2)(A); IF the probationer has not already been sentenced, order the probationer brought before the court for sentence which shall then be imposed without further stay under Wis. Stat. 973.15.

973.15(2)(A); the court may impose AS MANY sentences AS there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously.

When the final clause is read in conjunction with Mr. Rodriguez factual situation posed on this appeal and when it is realized that the Authority of the court is to impose whatever sentence is appropriate, it is apparent that the stricture imposed on the sentencing Authority is that the term of the sentence imposed at the sentencing procedure following revocation must commence when the defendant enters prison.

The lacuna in the Authority granted to the circuit court upon sentencing following revocation is not the failure of Wis. Stat. 973.15 to authorize the court to make the sentence imposed following revocation consecutive to each other, but rather is the lack of Authority given to the court to postpone the term of the sentence to a later date by making them consecutive to an existing prison term.

Mr. Rodriguez contends that the sentence the court imposed is an impossibility and therefore, illegal.

In *State v. Myers*, 948 N.W.2d 500, 2020 WL 3865159, the Court of Appeals were more persuaded by the State's argument. The State contends that Myers sentence as originally imposed was an illegal sentence because it was not possible to serve such a sentence. The State argues, as we understand it, that it was impossible to serve a sentence that was both consecutive to the 15CF572 sentence and concurrent with the 16CF270/80 sentences given that: (1) the 15CF572 and 16CF270/80 sentences

were all consecutive to one another, and (2) the 16CF270/80 sentences had to be served before the 15CF572 sentence because they were the first sentences imposed. The State argues that the only way Myers sentence in this case could conceivably be served as originally imposed would be by splitting the initial confinement portion of the sentence, contrary to *State v. Bagnall*, 61 Wis.2d 297, 212 N.W.2d 122 (1973), superseded by statute on other grounds, as stated in *State v. Rabe*, 96 Wis.2d 48, 56, 291 N.W.2d 809 (1980). In *Bagnall*, our Supreme Court concluded that a court cannot split a sentence and provide for only part of the term to be served concurrently with another. See *Bagnall*, 61 Wis.2d At 312.


As here in the instant case, it would be impossible for Mr. Rodriguez to serve a sentence that was both consecutive to the 2017CF2397 sentence and concurrent with the 2015CM318 sentence given that: (1) the 2015CM318 and 2017CF2397 sentences are consecutive to one another and (2) the 2017CF2397 sentence has to be served before the 2015CM318 sentence.

For example, it would be unreasonable and absurd to read the statute to mean that a new sentence imposed in 2020 can be made concurrent with a sentence completed in 2018, even though the literal language of the statute might seem to authorize this result. We interpret statutes to avoid absurd, unreasonable, or implausible results. See *Force ex rel. Welkenbach v. American Family Mut. Ins. Co.*, 2014 WI 82,

¶ 30, 356 Wis.2d 582, 850 N.W.2d 866.

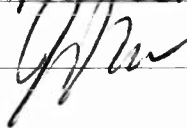
Mr. Rodriguez Argues that the two statutes must be read together AND, because Wis. Stat. 973.15 (2) (A) does provide that A sentence may be concurrent or consecutive, it was wrong of the circuit court to make his withheld sentence to be completed in the future After completion of his 2017 sentence, the statute 973.15 does not state or authorize such A sentence,

This Court should accept review in this case to correct the logic and error of both the Court of Appeals and the Circuit Court.

Respectfully Submitted,


Certificate of Compliance with Rule 809.19(8)

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and Appendix. The length of this brief is 1,380 words.



Certificate of Compliance with Rule 809.19(2)

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an Appendix that complies with s. 809.19(2)(A) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) the decision of the Court of Appeals; (4) judgment of conviction.

