

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-3249-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00-CF-6085

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD B. YOUNG,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JACQUELINE D. SCHELLINGER, Judge. *Reversed and cause remanded with directions.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Richard Young appeals a judgment convicting him of one count of delivery of a controlled substance, as a party to a crime. He also appeals an order denying his motion for sentence modification or resentencing. Young makes several arguments, but we need address only one: whether the

circuit court imposed unreasonable conditions of probation.¹ We reverse and remand for resentencing because we conclude that the probation conditions imposed by the circuit court were unreasonable.

¶2 Young pled no contest to one count of delivery of heroin, three grams or less. The circuit court imposed a total sentence of twenty years, consisting of fifteen years of initial confinement followed by five years of extended supervision. The court stayed the sentence and placed Young on probation for fifteen years with a broad range of conditions. Young filed a postconviction motion seeking resentencing or sentence modification. The circuit court denied the motion.

¶3 The circuit court has broad discretion to fashion appropriate conditions of probation in each individual case. *See State v. Simonetto*, 2000 WI App 17, ¶6, 232 Wis.2d 315, 606 N.W.2d 275. We will affirm probation conditions on appeal as long as they “appear to be reasonable and appropriate” and “serve the dual goals of probation: rehabilitation and protection of the community.” *Id.* (citation omitted). The circuit court misuses its discretion if it imposes “probation conditions that reflect [its] own idiosyncrasies rather than serve a rehabilitative purpose.” *State v. Oakley*, 2001 WI 103, ¶13, 245 Wis. 2d 447, 629 N.W.2d 200, *opinion clarified on denial of reconsideration*, 2001 WI 123, 248 Wis. 2d 654, 635 N.W.2d 760 (Wis. Nov. 23, 2001) (No. 99-3328-CR), *cert. denied*, 70 U.S.L.W. 3670 (U.S. Oct. 7, 2002).

¹ We usually decide cases on the narrowest possible grounds. *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989).

¶4 The circuit court imposed the following probation conditions. Young must serve one year in jail without good time, Huber privileges or electronic monitoring of any sort. Young must attend Narcotics Anonymous, Cocaine Anonymous, or Alcoholics Anonymous six times a week for five years after his release from jail and attend as often as possible while in jail. Young must diligently seek and maintain employment, and never engage in behavior that results in his discipline or termination from work.² Young must never be late for work, never leave work early, never take longer breaks than those that are prescribed, and never be absent from work unless he is “so sick that a doctor has written an excuse that says [he] couldn’t possibly go to work.” Young must complete a course in parenting education within the first six months of his release from jail. He must also improve his reading level up to the eighth grade or get an HSED or GED. Young must complete a two-year course in vocational training to better his employment prospects. Young must complete one thousand hours of community service within five years on a regular schedule to be set up just like a job. Young must provide to his probation agent the names and birth dates of all persons who visit his home and seek prior approval from his agent for any visits. Young must not possess or use alcohol or illegally controlled substances and may

² The written judgment of conviction states that Young is required to maintain full time employment at a “regular (not temporary or seasonal) job which provides the best compensation and employment benefits available to someone with the defendant’s skills and knowledge.” The circuit court’s oral ruling states that Young is required to maintain employment under the terms and conditions set by his probation agent, but does not specify the type of employment. When there is a conflict between a written judgment of conviction and an unambiguous oral pronouncement by the circuit court, the oral pronouncement controls. See *State v. Schordie*, 214 Wis. 2d 229, 231 n.1, 570 N.W.2d 881 (Ct. App. 1997). Here, an argument can be made that the circuit court’s oral ruling and the written judgment are in conflict. By the same token, it could be argued that they are not in conflict, but the written judgment is simply more specific. We do not resolve this issue because the parties do not raise it and we are not required to do so to reach our decision.

not have contact with any person or place associated with use, possession, or distribution of illegal controlled substances or drug paraphernalia. Young must submit to a DNA test and pay \$2,000 in fines plus, penalties, assessments and surcharges over the next five years on a regularly scheduled system of payments. Young must also maintain a stable and completely peaceful residence and become current on his child support payments.³

¶5 While some of these conditions undoubtedly further rehabilitative goals, we agree with Young that the conditions, considered together, are not reasonable. We question whether any person, much less a person struggling to overcome a drug addiction, could maintain the range of activities imposed by the court. At the time of his arrest, Young had custody of five of his young children. In addition to the time that will be required for him to parent these children, Young must simultaneously maintain employment with rigorous conditions, attend a twelve-step meeting six days a week for one or two hours, attend school and perform a half-day of community service per week. With regard to education alone, Young will be required to dedicate a considerable amount of time each week to comply with the circuit court's conditions that he complete a parenting class, improve his reading skills or obtain a GED or HSED, and complete a two-year vocational training course. For example, Young proffered an affidavit by his investigator in support of his motion for resentencing that showed that a typical two-year vocational training course would, at a minimum, require evening classes that run from 6:00 p.m. until 9:00 p.m. twice a week, and that a typical course

³ With the exception of the one-year jail term, the circuit court imposed the same conditions for probation and extended supervision. Although we have framed our discussion solely around the probation conditions, Young challenges the conditions as applied to both probation and extended supervision.

schedule for training as an auto mechanic, an area in which Young already has experience, is full time from 7:30 a.m. until 3:30 p.m., Monday through Friday for two years. In addition to juggling the time required for these various activities, Young may be required to take public transportation, which will require additional time and scheduling because the circuit court also suspended Young's drivers license.

¶6 In sum, we conclude that these conditions are unreasonable in combination because the sheer number of hours they require will make compliance virtually impossible. Even if Young were able to arrange a schedule that would successfully accommodate all of the activities, which seems doubtful, Young would be left with little or no time for family responsibilities, which the circuit court noted should be a priority for Young. Because the probation conditions are unreasonable, we reverse the sentencing decision in its entirety—both the sentence of probation and the stayed sentence—and remand with directions that Young be resentenced.

By the Court.—Judgment and order reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

