

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2644-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID R. BJERKAAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
MICHAEL J. MULROY, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

¶1 PER CURIAM. David Bjerkaas appeals from a judgment convicting him of bail jumping. The judgment was entered after the court sentenced him to a prison term following revocation of his probation. He contends

that his probation expired before he was revoked, thereby precluding the court from entering judgment. We disagree and therefore affirm.

¶2 In 1989 Bjerkaas received a four-year prisoner term in case number 88-CF-827, and a five-year probation term for the charge in this case, 88-CF-933. At sentencing the trial court declared its intent that the probation term would commence upon Bjerkaas's release from prison on parole. The judgment stated only that the probation was consecutive to the sentence in 88-CF-827.

¶3 Bjerkaas was released on parole in 1991, and finally discharged from his 88-CF-827 sentence in March 1996. Pursuant to the written judgment of conviction, the Department of Corrections deemed the five year probation term in 88-CF-933 commenced on the March 1996 discharge date and revoked Bjerkaas's probation for violations that occurred in 1999. At the sentencing hearing Bjerkaas moved to dismiss the case contending that his probation had commenced on his 1991 parole release date and expired five years later. The trial court denied that motion and imposed sentence. Bjerkaas appeals the determination that he was still on probation in 1999.

¶4 Bjerkaas concedes that under the judgment of conviction as written his probation commenced on his discharge date in March 1996, and that the revocation and sentence based on the 1999 acts was proper. However, he contends that the trial court's stated intention that probation commence upon parole should have determined his probation term and should have precluded any revocation proceeding based on acts committed more than five years after the 1991 parole release date.

¶5 In the usual case, Bjerkaas is correct that the trial court's unambiguous oral pronouncement of the sentence controls over the judgment of

conviction. See *State v. Lipke*, 186 Wis. 2d 358, 364, 521 N.W.2d 444 (Ct. App. 1994). In this case, however, the trial court pronounced an illegal sentence because it lacked authority to order a term of probation that commenced upon the defendant's release on parole for another charge. See *State v. Givens*, 102 Wis. 2d 476, 478, 307 N.W.2d 178 (1981). Therefore, the written judgment necessarily controlled, and unambiguously provided that the probation in 88-CF-933 would commence upon completion of the sentence in case number 88-CF-827. That undisputedly occurred in March 1996.

By the Court.—Judgment affirmed.

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

