COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0963 **Cir. Ct. No. 90-CF-567**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD H. WAGNER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: MICHAEL O. BOHREN, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Ronald H. Wagner appeals from the order which denied his motion for postconviction relief. The issue on appeal is whether his judgment of conviction in Waukesha County Case No. 90-CF-567 should be amended to read that the sentence commences forthwith. Because we conclude that the judgment of conviction should not be amended, we affirm.

¶2 It is necessary to briefly explain the complex procedural history of this case in order to understand the issue presented for review. On August 1, 1991, Wagner was sentenced in a Washington county case to a term of prison and probation. He subsequently received four additional sentences in four different counties, all to be served consecutively. The counties were Waukesha, Ozaukee, Milwaukee, and Outagamie.

¶3 In November 1999, the Washington county judgment of conviction was amended to say that the term of probation would begin when Wagner was released from the Wisconsin prison system. Wagner appealed from this amended judgment and eventually this court remanded the matter to the circuit court. The circuit court then entered a new judgment of conviction which imposed a five-year concurrent sentence with a sentence and conviction date of November 5, 1999. As a result of the resentencing, the court ordered the Department of Corrections to calculate the sentence credit due under WIS. STAT. § 973.04 (1997-98).

¶4 By the time this amended judgment of conviction was entered, Wagner had served his prison sentences in all but the Outagamie county case. Applying WIS. STAT. § 973.04 (1997-98), the Department of Corrections credited Wagner with the time he had served on his Washington county case from the date he had been placed in custody until his mandatory release date, which was also the date he began serving his Waukesha county sentence. The Department of Corrections then began running his Washington county sentence as a concurrent sentence starting the day of resentencing, November 5, 1999.

¶5 Wagner then filed a pro se motion requesting that his Waukesha county judgment be amended to read "commencing forthwith." By this he meant that his Waukesha sentence should have been credited from the date of sentencing

in that case, August 23, 1991. The court held a hearing and denied the motion. The court agreed with the State's argument that to grant Wagner this credit would result in him receiving double credit since he would be serving the Waukesha sentence at the same time he was serving the Washington county sentence. It is from this order that Wagner appeals.

¶6 The Department of Corrections has special expertise in interpreting the sentence computation statutes, and we owe deference to that expertise. "[C]ourts frequently refrain from substituting their interpretation of a statute for that of the agency charged with the administration of a law. As the court of appeals correctly acknowledged, courts frequently give deference to the interpretation of statutes by the administrative agencies charged with their enforcement." ***State ex rel. Parker v. Sullivan***, 184 Wis. 2d 668, 699, 517 N.W.2d 449 (1994) (citation omitted).

¶7 Wagner first argues that when a sentence is imposed consecutive to a previous sentence and the previous sentence is vacated, then the later sentence must be advanced to the date it would have begun. *See* ***Tucker v. Peyton***, 357 F. 2d 115 (4th Cir. 1966). We conclude, however, that the ***Tucker*** rule does not apply in a case such as this one when the first sentence is vacated but the appellate court authorizes resentencing.

¶8 Wagner next asserts that the total amount of time he is serving under the amended judgments is greater than the total amount to which he was sentenced. Specifically, he asserts that he will serve a total of eighteen years, one month, in prison when he was sentenced to a total of sixteen years, eight months. As the State argues, however, Wagner has excluded from this calculation the sentence credit he received at resentencing on the Washington county case.

¶9 Further, the Waukesha county sentence, which was the later-imposed sentence, was to be served consecutively to the Washington county sentence and remains a consecutive sentence. The fact that the Washington county case was made a concurrent sentence has no effect on the Waukesha county sentence because the Washington county sentence was the first sentence imposed. If the start date of the Waukesha county case were advanced to the date of sentencing, then Wagner would be receiving double credit since his consecutively-imposed Waukesha county case would overlap with the Washington county case. The Department of Corrections properly calculated the sentences imposed. Consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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