

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 2003

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. 03-0957-CR

Cir. Ct. No. 02CF000104

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY J. RAMIREZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
ROBERT P. VANDEHEY, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Jeremy Ramirez appeals a judgment convicting him of failure to report to jail after a stay of sentence, in violation of WIS. STAT. § 946.425(1m)(b) (2001-02).¹ He contends that as a matter of law, the evidence

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

was not sufficient to support the jury's verdict of guilty. We disagree and therefore affirm.

¶2 Between 10:00 a.m. and 11:00 a.m. on July 18, 2002, Ramirez entered a plea to second offense OWI and received a twenty-day jail sentence. During the proceeding he asked the court to stay the sentence for sixty days. The trial court refused the request, stating the sentence "will start today." The court added "you should start your sentence this morning and self-report by 12:00 p.m." The judgment of conviction also provided that the sentence commence at 12:00 p.m.

¶3 Ramirez did not report until eight days later. The State then commenced this prosecution, alleging that Ramirez's failure to report on July 18 constituted a violation of WIS. STAT. § 946.425(1m)(b). Based on the facts presented above, the jury found Ramirez guilty.

¶4 WISCONSIN STAT. § 946.425(1m)(b) provides that "[a]ny person who receives a stay of execution of a sentence of imprisonment of 10 or more days to county jail ... and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class H felony." The trial court instructed the jury that the State had to prove two elements: (1) that Ramirez was sentenced to jail with a stay of execution and a specified reporting date at the conclusion of the stay; and (2) that Ramirez intentionally failed to report as ordered. Ramirez conceded that he received a jail sentence, that it commenced on July 18 at 12:00 p.m. and that he failed to timely report for it. The trial, and ultimately the verdict, centered on whether the State proved that the trial court granted him a stay of execution of the sentence when, at approximately 11:00 a.m. on July 18, it ordered him to report at 12:00 p.m. on that day.

¶5 On appeal, Ramirez contends that as a matter of law the court's order did not constitute a stay. He summarizes his argument as follows.

Mr. Ramirez contends that because the judge in the [OWI proceeding] explicitly denied his request for a [60 day] stay of execution of the sentence ..., his sentence by default began at noon by virtue of the plain language of WIS. STAT. § 973.15(1). Accordingly, the judge's statement that Mr. Ramirez should report to jail by noon was not a stay. Rather, it was the automatic legal consequence of the denial of Mr. Ramirez's request for a stay. Because there was, as a matter of law, no stay of execution in [the OWI case], the evidence is not sufficient to support the conviction in this case.

¶6 The statute Ramirez refers to, WIS. STAT. § 973.15(1), states that unless otherwise provided, "all sentences commence at noon on the day of sentence." WISCONSIN STAT. § 973.15(8) provides the relevant exception, allowing the sentencing court to stay execution of the sentence "for not more than 60 days."²

¶7 We do not overturn a jury's verdict on a sufficiency of the evidence claim unless the evidence is so insufficient in force and probative value that no reasonable trier of fact could use it to find the defendant guilty beyond a reasonable doubt. *State v. Bodoh*, 226 Wis. 2d 718, 727, 595 N.W.2d 330 (1999). However, the real question here is whether a "stay of execution" under § 946.425(1m)(b) encompasses the trial court's order in this case. That is a question of statutory construction we decide as a matter of law, without deference to the trial court's determination. See *State v. Nixa*, 121 Wis. 2d 160, 163, 360

² The court may also stay a sentence under WIS. STAT. § 973.15(8) without the sixty day limit for "legal cause" or when granting probation. Neither of these exceptions applies in this case.

N.W.2d 52 (Ct. App. 1984). In doing so we construe the statute, if possible, according to its plain meaning. *State v. Williquette*, 129 Wis. 2d 239, 248, 385 N.W.2d 145 (1986).

¶8 WISCONSIN STAT. § 973.15(8) provides a maximum stay of sixty days but no minimum stay. Consequently, we construe “stay of execution” in WIS. STAT. § 946.425(1m)(b) to plainly include any postponement of the sentence no matter how brief. Here, Ramirez concedes that the trial court had discretion to order him immediately to jail upon sentencing at approximately 11:00 a.m. on July 18. However, the court instead delayed the reporting time. The court therefore granted a “stay of execution” and the fact that the specified reporting time coincided with the 12 p.m. commencement of sentence provision does not compel a different conclusion.

¶9 We acknowledge the argument Ramirez advances concerning our obligation under the doctrine of *in pari materia* to read together and harmoniously construe statutes relating to the same subject matter. See *Perra v. Menomonee Mut. Ins. Co.*, 2000 WI App 215, ¶9, 239 Wis. 2d 26, 619 N.W.2d 123. However, we must also construe statutes to avoid absurd or unreasonable results. *Janssen v. State Farm Mut. Auto. Ins. Co.*, 2002 WI App 72, ¶16, 251 Wis. 2d 660, 643 N.W.2d 857. It is highly unreasonable to construe the statutes involved here to deem a postponement of sentencing from 11:00 a.m. to 11:45 a.m., or to 12:15 p.m., a “stay” but a postponement to precisely 12:00 p.m. not a “stay.” The plain, and only reasonable, construction of WIS. STAT. § 946.425(1m)(b) is to deem as “stays” all postponements of sentencing.

By the Court.—Judgment affirmed.

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