

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 8, 2004

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. 03-3028-CR

Cir. Ct. No. 96-CF-652

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES R. BECKERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. James Beckerson appeals a judgment of conviction and sentence entered after his probation was revoked, as well as an order denying his postconviction relief. Beckerson argues the revocation was invalid because his probation actually expired in 2000. We disagree and affirm the judgment and order.

Background

¶2 On July 17, 1997, Beckerson pled no contest to two misdemeanor counts of failure to pay child support. The court withheld sentence, placing Beckerson on three years' probation with a condition that he pay \$5,554 in restitution, the amount of his arrearage.

¶3 In April 2000, Beckerson filed a "Petition and Stipulation to Waive Appearance and Hearing, and Order Extending Probation Judgment for Restitution" form. The top half of this document is the petition and stipulation that: (1) acknowledges the Department of Corrections believes the probationer has not made a good faith effort to pay restitution; (2) acknowledges the DOC is requesting either extension of probation for a specified period to facilitate payment or revocation of probation and entry of a civil judgment for the amount outstanding; (3) stipulates to waive the probationer's right to a contested hearing on the issue of extension; and (4) requests the court grant the DOC's request. Here, Beckerson acknowledged the DOC was requesting extension of his probation for two years.

¶4 The bottom half of the document is the order for the court to complete and sign. It contains form language acknowledging the defendant's waiver and the merit of the DOC's request. This section also provides the court two lines from which to select: one for extension of probation and one for revocation. In this case, the court signed the order without indicating whether probation was extended or revoked, and without indicating the term of extension.

¶5 In May 2002, Beckerson again filed a petition/stipulation and the court signed the order. This time, the court fully completed the order, extending Beckerson's probation for three years as the DOC requested. In July 2002,

Beckerson's probation was revoked. In August 2002, Beckerson was sentenced, receiving nine months in jail on each charge, to be served concurrently.

¶6 In August 2003, Beckerson filed a postconviction motion.¹ He argued that the court had no jurisdiction to sentence him because his probation was "not lawfully extended" in April 2000 when the court failed to complete the order section on his petition. As a result, he claimed, his probation term expired July 17, 2000—three years after he was initially sentenced.

¶7 He also alleged ineffective assistance of trial counsel for failure to adequately raise the jurisdiction issue at his sentencing-after-revocation hearing. The attorney orally raised the issue of the incomplete order, but did not receive a direct answer from the court. When the attorney asked the court to specifically address the jurisdictional issue, the court denied any relief, stating that no briefs or motions had been formally presented. At the postconviction hearing, the court addressed the merits of the argument and concluded that Beckerson's probation had been lawfully extended in 2000. It held that the error had been merely technical and did not deny the court jurisdiction. Beckerson appeals.

Discussion

¶8 We agree with the trial court's conclusion that the failure to complete the 2000 order did not strip the court of jurisdiction. Whether a court

¹ In September 2002, the jail sentence was stayed pending appeal.

has jurisdiction is a question of law.² *State ex rel. V.J.H. v. C.A.B.*, 163 Wis. 2d 833, 840, 472 N.W.2d 839 (Ct. App. 1991). Interpretation of a document is also a question of law. *Cohn v. Town of Randall*, 2001 WI App 176, ¶5, 247 Wis. 2d 118, 633 N.W.2d 674. We conclude there is only one possible way to interpret the 2000 order.

¶9 The top half of the order is the defendant’s petition, which details the DOC’s plan and asks the court to adopt that recommendation. Here, this half specifies the DOC’s request is to extend Beckerson’s probation for a period of two years. The court is not bound by the DOC’s request, nor is it bound by the probationer’s petition. Because the court has not entered any details in the order, but has signed it, we conclude the only possible construction of the order is that it ratifies the probationer’s request and the department’s recommendation.³

¶10 Beckerson complains his trial counsel was ineffective for failing to file a formal motion challenging the 2000 revocation during the 2002 sentencing hearing. However, trial counsel had orally objected at sentencing, raising the issue

² We question whether Beckerson’s appeal is an appropriate method of challenging his probation revocation. Probation revocation is reviewed by writ of certiorari to the sentencing court. See *Bartus v. DHSS*, 176 Wis. 2d 1063, 1079, 501 N.W.2d 419 (1993) and *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 183, 572 N.W.2d 505 (Ct. App. 1997). Although Beckerson argues he has a jurisdictional issue which “may be raised at any juncture during a court proceeding,” *Bartus*, 176 Wis. 2d at 1082-83, the State there did not dispute that Bartus had correctly commenced judicial review of his probation revocation. Here, the State complains Beckerson has not petitioned the sentencing court of a writ of certiorari to properly begin his “court proceeding” on the revocation question.

³ Beckerson notes that line five of the order specifies the clerk will “docket this judgment without fee,” and docketing only happens if probation is not extended and a civil judgment is ordered. Thus, he argues, the order could mean his probation was terminated. We disagree. The docketing order would only apply if the court first ordered a money judgment be entered. As we explained above, the failure to specify terms in the order section constitutes ratification of the DOC and probationer’s request as listed in the petition. Here, the request was not for termination of probation and entry of a money judgment; it was for probation extension.

of the 2000 extension's validity. The court did not address the issue until counsel asked specifically for a ruling on the jurisdiction issue. The trial court stated that because no briefs or formal motions had been submitted, it would not consider the issue.

¶11 At the postconviction motion hearing, however, the court addressed the merits of the jurisdictional complaint. It stated that considering the totality of the circumstances, the failure of the court to check the box for extension and specify a time frame was a technical error. Thus, it ultimately denied Beckerson's motion for relief on the grounds that the 2000 extension was valid, not that counsel failed to file a motion. Counsel cannot be considered ineffective. *See State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985).

¶12 Beckerson additionally argues that probation cannot be extended simply to collect a debt. There is no indication this argument was raised in the circuit court and normally we could decline to consider it on appeal. *In re Eugene W.*, 2002 WI App 54, ¶13, 251 Wis. 2d 259, 641 N.W.2d 467. We nonetheless address the issue here.

¶13 WISCONSIN STAT. § 973.09(3)(a) allows probation to be extended for cause, and § 973.09(3)(b) allows extension for failure to pay restitution.⁴ Case law has qualified this, however, generally holding that failure to pay restitution cannot be the sole basis for extension if the probationer lacks the capacity to pay and has demonstrated a good faith effort to comply during probation. *See, e.g., State v. Davis*, 127 Wis. 2d 486, 497, 381 N.W.2d 333 (1986); *Huggett v. State*,

⁴ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

83 Wis. 2d 790, 803, 266 N.W.2d 403 (1978); *State v. Olson*, 222 Wis. 2d 283, 297, 588 N.W.2d 256 (Ct. App. 1998). We conclude these cases are inapposite: generally, they were based on a showing that the defendant made some good faith effort to make payment.⁵ Davis, for instance, was only \$300 short of fulfilling her obligation despite making regular payments over ten years. Olson had made monthly \$100 payments totaling \$22,400 over the ten years of his probation; the State was responsible for distributing it among the various counties to which it was owed. We therefore concluded Olson was not at fault when one county was not paid at all and the mere “debt collection” objective, absent more, was an insufficient basis for extending his probation in light of his good faith compliance.

¶14 Here, the petition Beckerson signed constitutes acknowledgement of the DOC’s belief Beckerson has failed to make a good faith effort to pay his restitution. The petition also acknowledges this lack of good faith is the DOC’s basis for seeking the probation extension. By signing the petition, Beckerson agreed to waive a hearing where he could have contested the alleged lack of good faith.

¶15 On appeal, the only specific evidence Beckerson presents of his payment on a \$5,554 obligation is that over a period of thirty-three months, he had paid \$758, or an average of about \$23 a month, during his initial three years on probation. Evidently, he managed to pay an additional \$1,789 prior to his 2002 extension; a revised restitution order shows he still owed \$3,007—more than half the original order—in November 2002. Beckerson has not suggested that his

⁵ These cases additionally deal with differently-worded versions of the statute, although the specific changes are not relevant to this discussion.

payments reflect the most he could afford to pay at any given time. He has not suggested he was unemployed or unable to work. He has not shown he has made any payments since 2002. In short, Beckerson has not contended he made any good faith effort to pay restitution. It is therefore not improper to extend his probation for failure to pay his obligation.

By the Court.—Judgment and order affirmed.

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

