

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 22, 2009

David R. Schanker
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. 2009AP250-CR

Cir. Ct. No. 2003CF843

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MARQUEL A. HARRIS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Marquel A. Harris appeals from an order denying his motion to modify a sentence reconfining him after revocation of his extended supervision. He argues that the circuit court did not have authority to reconfine

him because his probation had been improperly revoked several years earlier. We affirm.

¶2 On July 15, 2003, Harris was sentenced to four years of imprisonment for burglary, with two years of initial confinement and two years of extended supervision. The circuit court stayed the sentence and placed Harris on probation for three years. On June 1, 2006, shortly before Harris's probation term was set to end, the circuit court entered a civil judgment against him for unpaid restitution and court-ordered obligations at the request of the Department of Corrections. Harris was placed in custody on July 11, 2006, several days before his three-year probation term would have expired. On August 30, 2006, Harris's probation was revoked and he was ordered to serve the two-year term of initial confinement that had been imposed and stayed. On September 22, 2006, his probation revocation was upheld in an administrative appeal. Harris did not petition for *certiorari* review to the circuit court.

¶3 After serving two years in prison, Harris was released on extended supervision from his term of initial confinement on March 11, 2008. On May 7, 2008, Harris's extended supervision was revoked. On June 24, 2008, the circuit court ordered Harris to return to prison for two years. Harris moved for modification of the sentence, but the circuit court denied his motion.

¶4 Harris argues that the circuit court did not have authority to sentence him to two years of reconfinement on June 24, 2008, because his probation had been improperly revoked on August 30, 2006, making his incarceration and extended supervision since that date illegal. A challenge to a probation revocation decision must be raised by petition for *certiorari* review to the circuit court. *State ex rel. Reddin v. Galster*, 215 Wis. 2d 179, 183, 572 N.W.2d 505 (Ct. App. 1997).

Harris had forty-five days from the date of the decision in his administrative appeal to bring a *certiorari* action challenging his 2006 probation revocation decision. *See State ex rel. Cramer v. Wisconsin Court of Appeals*, 2000 WI 86, ¶51, 236 Wis. 2d 473, 613 N.W.2d 591. Harris did not petition for *certiorari* review of the revocation decision. Since Harris did not timely challenge his 2006 probation revocation, he is barred from now arguing that the revocation was invalid.

¶5 Harris contends that we should consider his argument because the court's jurisdiction to impose sentence may be raised at any time. *See Bartus v. DHSS*, 176 Wis. 2d 1063, 1082-83, 501 N.W.2d 419 (1993) (jurisdictional challenges may be raised at any time during a court proceeding). He contends he was discharged from probation by the circuit court's order of June 1, 2006, so the subsequent probation revocation was invalid. Even if Harris's argument were properly before us, we would reject it. The circuit court's June 1 order entered a civil judgment against Harris for unpaid restitution and court-ordered financial obligations. The circuit court's order did not discharge Harris from probation; in fact, the court's mandate did not mention Harris's probation at all. Since Harris was not discharged from probation by the June 1 order and did not receive an administrative discharge from probation prior to being taken back into custody, the Department had authority to take him back into custody and revoke his probation on August 30, 2006.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

