

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1593-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ALLEN K. UMENTUM,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed.*

MYSE, J. Allen Umentum appeals the trial court's sentence of six months' confinement (imposed and stayed) with a sentence of eighteen months' probation involving certain conditions, including ten days' confinement in the county jail then imposed. Umentum contends that the court is without authority to impose a sentence of probation concurrent to a sentence previously imposed by the Outagamie County Circuit Court and for which Umentum was currently on parole. Umentum also contends that the court's requirement that the imposed and stayed sentence be served consecutive to the sentence he was serving begins on the day he re-enters prison as a result of his parole revocation and not at the end of the sentence he is serving. Because this court concludes that a sentence of probation can be made concurrent to a sentence being served on parole and that the imposed and stayed sentence is

consecutive to the sentence previously imposed by the Outagamie County Circuit Court, the judgment and order are affirmed.

Allen Umentum was convicted of a felony in Outagamie County and sentenced to five years in the Wisconsin prison system. He was paroled from prison and committed another offense in Shawano County. Following conviction, the Shawano County Court imposed and stayed a six-month sentence in county jail to be served consecutive to the Outagamie County sentence. Umentum was placed on probation for a period of eighteen months and required to meet a series of conditions of probation, including ten days' confinement. The sentencing took place on April 29, 1994, and Umentum immediately served the ten days as a condition of probation. His probation and parole were revoked in November 1995, and Umentum was returned to Dodge Correctional Institution to serve the remainder of the felony sentence imposed by the Outagamie County Court.

Both issues raised by Umentum involve an interpretation of statutes and as such present questions of law which are to be determined without deference to the trial court's determination. *See State ex rel. Frederick v. McCaughtry*, 173 Wis.2d 222, 225, 496 N.W.2d 177, 179 (Ct. App. 1992). The goal of statutory construction is to determine the legislature's intent. *Id.* The first recourse to determine legislative intent is the language of the statute itself. *Id.* at 225-26, 496 N.W.2d at 179. Only if the language of a statute is ambiguous may one resort to legislative history and other extraneous matters in attempting to determine legislative intent. *Id.*

Umentum first contends that probation cannot be concurrent to his parole. Section 973.15(2)(a), STATS., provides:

[T]he court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously.

This language clearly empowers the court to impose a sentence either concurrent with or consecutive to the sentence now being served. Further, §

973.09(1)(a), STATS., provides in part that "The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously." This necessarily implies that probation may be made concurrent with a previously imposed sentence.

The Shawano County Court elected to impose probation which commenced upon sentencing even though Umentum, who was on parole, was serving the remaining portion of his Outagamie County sentence at the time probation was imposed. The statute clearly and unambiguously provides that the probationary sentence can be imposed concurrently with the sentence now being served. The fact that Umentum is on parole does not change the legislative grant of authority to the court to make the sentence concurrent. Parole is part of a sentence being served and does not change the fact that he was serving his sentence imposed by the Outagamie County Circuit Court at the time the Shawano County Court ordered probation to commence. Therefore, Umentum's contention that the court is without power to structure such a sentence has no merit. Indeed, it would be unfair and unduly harsh on defendants to require that any sentence of probation be served consecutive to and not concurrent with a previously imposed sentence.

Umentum next contends that there is ambiguity as to when the imposed and stayed sentence of six months' confinement is to be served. Umentum raises the issue by asking the question: this sentence is to be served consecutive to what? The answer to the question was provided by the court itself when it imposed a sentence to be served consecutive to the sentence imposed by the Outagamie County Court. The answer therefore is that upon the conclusion of Umentum's Outagamie County sentence, Umentum will be required to serve six months' confinement for the offense committed in Shawano County. The intention of the court to achieve this end is clearly reflected by the language of the sentence it imposed. There is no statutory provision that restricts the court's power to provide the sentence be consecutive to the previously imposed sentence.

While there may be some scenarios in which the imposition of such a sentence would result in strange and peculiar results, the facts of this case are rather straightforward and the result clearly required by the nature of the sentence imposed by the Shawano County Court. This court therefore concludes that the sentence to six months' confinement is to be served consecutive to the sentence imposed by the Outagamie County Court.

By the Court. – Judgment and order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.