

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 31, 1997

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, 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. 97-1000-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LEVI HOGNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
ROBERT RASSMUSSEN, Judge. *Reversed and cause remanded with directions.*

LaROCQUE, J. Levi Hogner appeals a sentence imposed as part of an amended judgment of conviction for operating a motor vehicle (OWI-third offense). Hogner maintains that the initial sentence was illegal because it did not impose the mandatory thirty-day jail sentence and that the court imposed and stayed a one-year sentence without explaining its reasons for the length of the jail

term. This court reverses and remands for imposition of a new sentence in conformity with the law.

Hogner entered a guilty plea to OWI-third in March 1995, and the circuit court imposed and stayed a one-year jail sentence and placed Hogner on probation for two years. The court ignored the minimum mandatory thirty-day jail sentence plainly required by § 346.65(2)(c), STATS. Later, in January 1997, following repeated misconduct and violations of the conditions of his probation, the court revoked the probation and ordered the jail sentence be served. Hogner was released from jail on April 15, 1997, pending the outcome of this appeal. He is currently credited with serving seventy-five days of his one-year sentence.

Hogner cites *State v. Meddaugh*, 148 Wis.2d 204, 435 N.W.2d 269 (Ct. App. 1988), wherein the State successfully appealed a judgment that imposed a thirty-day jail term as a condition of probation following a conviction for OWI-third. The court of appeals reversed and remanded for resentencing because probation is not a sentence, and the judgment therefore did not comply with the statute. *Id.* at 211, 435 N.W.2d at 272. This court agrees that the sentence in this case was similarly illegal.

Hogner, however, now contends that the balance of his unserved sentence be remitted without further proceedings in the circuit court. This court rejects his argument for discrete reasons. First, Hogner did not raise an objection at the time he was placed on probation without a sentence to jail, either by motion to the circuit court or by appeal. A defendant who fails to timely object to an error should not be allowed to wait for years, during which he engages in repeated misconduct that results in revocation of his probation, to complain that the original court decision was in error. Moreover, even if the original judgment was void

ab initio, Hogner fails to cite a single authority for the proposition that resentencing is an improper remedy. To the contrary, the case he cites stands for the proposition that resentencing is the proper remedy. This court need not further review an issue inadequately briefed. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992). The original sentence is therefore reversed and the cause remanded.

Hogner also contends that the one-year jail term was inappropriate because it did not conform to the circuit court's guidelines for OWI-third and because the court did not explain its reasons for the sentence. Because the matter is remanded for a new sentence, it is not necessary to address the challenge to the original.

By the Court.—Judgment reversed and cause remanded with directions.

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

