COURT OF APPEALS
DECISION
DATED AND FILED

December 2, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2333-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE PATERNITY OF ASHLEY M.F. AND SHEENA M.F.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JAMES P.F.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Barron County: JAMES C. EATON, Judge. *Affirmed.*

HOOVER, J. James P.F. appeals an order denying him sentence credit when he was not admitted to the county jail to serve time on an order for commitment for civil contempt.[1] James asserts that § 973.15(7), STATS., and ***State***

[1] This is an expedited appeal under RULE 809.17, STATS.

v. Riske, 152 Wis.2d 260, 448 N.W.2d 260 (Ct. App. 1989), require that persons unable to serve a civil sanction through no fault of their own be given sentence credit. This court concludes that such relief does not apply to remedial sanctions and therefore affirms.

The relevant facts are undisputed. James was given a ninety-day sentence in the Barron County Jail for contempt, consecutive to "any other time being served," or until he met certain purge conditions. At the time of sentencing, James was incarcerated in the Rusk County Jail on a separate matter. Upon release, he was transported to Barron County to serve a sentence on another case. On October 5, 1996, James completed that sentence. The Barron County jailer had no document indicating that he was to commence the contempt sentence, and he was therefore released from jail. In March 1997, having still not met purge conditions, James was incarcerated in Barron County to commence serving the ninety-day contempt sentence.

James challenges this incarceration on appeal, asserting that § 973.15(7), STATS., provides credit for the time a person is at liberty through no fault of his own, even for remedial sanctions. Section 973.15(7) provides: "If a convicted offender escapes, the time during which he or she is unlawfully at large after escape shall not be computed as service of the sentence." This statute "codifies the broader principle that a person's sentence for a crime will be credited for the time he was at liberty through no fault of the person." ***Riske***, 152 Wis.2d at 265, 448 N.W.2d at 262. He further contends that, following ***State v. Pultz***, 206 Wis.2d 111, 556 N.W.2d 708 (1996), this state no longer recognizes a distinction between "civil" and "criminal" contempt because each may result in a period of confinement. He therefore argues that § 973.15(7) is equally applicable to civil contempt sanctions as to criminal sentences, and that he should be given credit on

his remedial contempt sentence for time he was at liberty through no fault of his own.

The application of law to undisputed facts is a question of law we review de novo. *See* ***State v. Beiersdorf***, 208 Wis.2d 492, 496, 561 N.W.2d 749, 751 (Ct. App. 1997). This court concludes that § 973.15(7), STATS., and ***Riske*** apply only to criminal sentences; they do not collectively permit a person given a remedial sanction to be granted sentence credit for time spent at liberty through no fault of his or her own. First, ***Riske*** involved giving sentence credit to a defendant with a criminal sentence, not a civil sanction. ***Id***. at 262, 448 N.W.2d at 261. Further, the language used by the legislature in the criminal code recognizes a difference between civil and criminal actions. Two types of sanctions may be imposed for contempt of court: remedial and punitive. *See* §§ 785.03(1)(a) and (b), STATS. A remedial sanction is one imposed for the purpose of terminating a continued contempt. Section 785.01(3), STATS. A sanction is remedial if "the defendant stands committed unless and until he performs an affirmative act required by the court's order." ***Feiock v. Feiock***, 485 U.S. 624, 632 (1988) (quoting ***Gompers v. Bucks Stove & Range Co.***, 221 U.S. 418, 442 (1911)). The conditional nature of the punishment renders this relief remedial as opposed to punitive. ***Id.*** at 633. In contrast, a punitive contempt action is unconditional because a defendant cannot "undo or remedy what has been done nor afford any compensation" and the contemnor "cannot shorten the term by promising not to repeat the offense." ***Id.*** (quoting ***Gompers***, 221 U.S. at 442).

This court is unpersuaded by James's argument that this state no longer recognizes a distinction between remedial and punitive contempt. ***Pultz*** does not convert a civil proceeding into a criminal action for all purposes. Instead,

it stands for the narrow proposition that a person facing a remedial contempt sanction is entitled to counsel. ***Pultz***, 206 Wis.2d at 114, 556 N.W.2d at 709.

James was given a civil contempt sentence for failure to pay child support. Had he met the purge conditions, he would not have been required to serve any sentence. Instead, his contempt continued through the date he was incarcerated. The conditional nature of the punishment rendered his contempt sanction civil. Section 973.15(7), STATS., and ***Riske*** do not compel sentence credit in remedial sanction cases.

In addition, when the legislature intends to apply provisions of the criminal code to civil actions, it expresses this purpose explicitly. For example, ***Pultz*** involves the application of § 967.06, STATS., which addresses the determination of indigency and appointment of counsel. ***Pultz***, 206 Wis.2d at 123, 556 N.W.2d at 713. In that statute, the legislature expressly states that when a person is detained or arrested in connection with a criminal offense, or in connection with any civil commitment proceeding, the person shall be informed of his or her right to counsel. *See* § 967.06, STATS. The absence of such inclusive language in § 973.15(7), STATS., indicates that the legislature did not intend to provide sentence credit to a person unable to serve a civil sanction through no fault of his own.

Finally, James argues that because he was incarcerated, he was not truly given an opportunity to purge his sanction, and therefore his opportunity to do so was of no consequence. This court is unpersuaded. Without a clear indication otherwise from the record, this court will presume that the trial court followed the law and provided James with the opportunity to purge the sanction.

By the Court.—Order affirmed.

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