COURT OF APPEALS
DECISION
DATED AND FILED

November 15, 2005

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. 2005AP289-CR

Cir. Ct. No. 1990CF903372

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NORMAN C. GREEN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Vacated and cause remanded with directions*.

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 FINE, J. Norman C. Green, *pro se*, appeals the circuit court's order denying his *pro se* motion to amend a 1991 judgment convicting him of first-

degree intentional homicide while armed, as party to a crime, "to reflect [his] common law spiritual name": "Prince Atum-Ra Uhuru Mutawakkil." Green's motion asserted that he "is a writer and his common law spiritual names is also his pen name," and that he "embraced his common law name for spiritual and cultural significance." (Underlining in original.) Green emphasized that he was not requesting to "change" his name as such, but, rather, to amend the judgment of conviction to reflect use of "both names at the same time," with his birth name added to his "common law spiritual name": "Prince Atum-Ra Uhuru Mutawakkil Aka, Norman C. Green JR." (Uppercasing in original.) He asserts that his "request balances" the interests of the State and the prison in which he is incarcerated and his "First Amendment Rights of free speech, expression, and religion."

¶2 The circuit court denied Green's motion in a brief order citing ***Williams v. Racine County Circuit Court***, 197 Wis. 2d 841, 541 N.W.2d 514 (Ct. App. 1995). We vacate the circuit court's order, and remand with directions.

¶3 "[C]onvicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison. Inmates clearly retain protections afforded by the First Amendment, including its directive that no law shall prohibit the free exercise of religion." ***O'Lone v. Estate of Shabazz***, 482 U.S. 342, 348 (1987) (internal quotation marks and citations omitted). These protections, however, must be balanced against "valid penological objectives—including deterrence of crime, rehabilitation of prisoners, and institutional security." ***Ibid.***

¶4 As material here, WIS. STAT. § 786.36(1) provides: "[A]ny resident of this state … upon petition to the circuit court of the county where he or she

resides and upon filing a copy of the notice required under s. 786.37 (1), with proof of publication, may, if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court."[1] This provision is not directly applicable here because there is no evidence in the Record that Green "resides" in Milwaukee County. But Wisconsin law recognizes, and the State concedes, that a person may either change or modify his or her name without resort to § 786.36(1) "through consistent and continuous use, as long as the change is not effected for a fraudulent purpose." ***State v. Hansford***, 219 Wis. 2d 226, 246–247, 580 N.W.2d 171, 180 (1998).

¶5 In its current posture, this case presents only the narrow issue of whether Green's judgment of conviction should be amended to reflect his use of Prince Atum-Ra Uhuru Mutawakkil as his name. The Milwaukee County Circuit Court has the power to amend its judgments at any time, ***Krueger v. State***, 86 Wis. 2d 435, 440, 272 N.W.2d 847, 849 (1979), and we deem it appropriate to incorporate the policy considerations inhering in WIS. STAT. § 786.36(1) in determining the parameters of a circuit court's exercise of discretion in considering an inmate's petition to amend a judgment of conviction to either change or modify his or her name, *see* ***Fahy v. Fahy***, 630 A.2d 1328, 1332–1333 (Conn. 1993) (recognizing that statutes may illumine analogous common-law principles). Indeed, the State concedes that § 786.36(1) can give useful guidance in modification-of-name situations that do not fall within the statute.

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[1] WISCONSIN STAT. § 786.37(1) reads: "Before petitioning the court to change or establish a name, the petitioner shall publish a class 3 notice under ch. 985 stating the nature of the petition and when and where the petition will be heard."

¶6 In considering whether to permit a name change under WIS. STAT. § 786.36(1), a circuit court has a "narrow" band of discretion—"the name change will be granted *unless* sufficient cause is shown to the contrary." ***Williams***, 197 Wis. 2d at 845, 541 N.W.2d at 516 (prisoner case adopting common-law principle expounded in ***Kruzel v. Podell***, 67 Wis. 2d 138, 153, 226 N.W.2d 458, 465 (1975)) (emphasis in original). ***Williams*** upheld the circuit court's decision to not permit a prisoner to change his name because, as the circuit court found, the proposed name change would interfere with valid penological concerns:

> "The State ... has a legitimate interest in being able to identify and identify quickly those persons both within prison and on parole who have been convicted of serious crimes. Certainly four armed robberies and four armed burglaries ... would trigger a need for the State to be able to identify the person who had committed those offenses and was in prison.
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> "... And there would be a need that the State would have to have an ability to know who the persons are who would be released, and then move into the neighborhoods of communities about the state so that they would know that such a convicted person—again four armed robberies, four armed burglaries—was living in the area....
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> ….
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> "... When a name is changed that frustrates, impedes and otherwise limits the ability of the State to know where that person is located."

Ibid. (quoting the circuit court, ellipses by ***Williams***). Many of those concerns are not implicated here on this Record because Green's motion does not seek to supplant his birth name with Prince Atum-Ra Uhuru Mutawakkil, but, rather, to supplement it, and, moreover, Green was sentenced to life imprisonment with a 2051 parole date. He was born in 1972, and so it is unlikely that the State will have trouble knowing where Green is even if the judgment is amended to recognize Prince Atum-Ra Uhuru Mutawakkil as one of his names.

¶7 The Record is devoid of any evidence that amending the judgment to read "Prince Atum-Ra Uhuru Mutawakkil a/k/a Norman C. Green" would burden the prison authorities in keeping track of Green or in maintaining appropriate prison discipline. There is also no evidence in the Record that Green, unlike Tiggs in ***State v. Tiggs***, 2002 WI App 181, 256 Wis. 2d 739, 649 N.W.2d 709, slept on his rights. Accordingly, the circuit court erroneously exercised its narrow discretion because it based its decision on a supposition not supported by the Record. *See* ***Nehls v. Nehls***, 151 Wis. 2d 516, 518, 444 N.W.2d 460, 460–461 (Ct. App. 1989) ("The term 'discretion' contemplates a process of reasoning which depends on facts that are in the record or are reasonably derived by inference from the record and yields a conclusion based on logic and founded on proper legal standards."). ***Kruzel*** set out what the proper exercise of discretion in a change-of-name situation requires:

> The reasons given for the denial of the change of name are completely conclusory and without any evidence of their applicability to the situation before the court. While the discretion which may be exercised by a trial judge in refusing a change of name is limited, to the extent that it is properly used it must be based on the underpinnings of the facts of the case and upon reasonable proof. Unsupported generalizations do not constitute a cause shown to deny a change of name.

Id., 67 Wis. 2d at 154, 226 N.W.2d at 466.

¶8 The State points out that the circuit court apparently dismissed Green's *pro* se motion without giving it a chance to appear and respond, and, therefore, it may very well be that the paucity of the Record is due to the State's inability to make a record. Accordingly, we vacate the circuit court's order and remand with directions that, unless the State, within twenty days from the date this decision is released, seeks an evidentiary hearing, the circuit court amend Green's

judgment of conviction to modify his name appearing thereon as: "Prince Atum-Ra Uhuru Mutawakkil a/k/a Norman C. Green." If the State requests an evidentiary hearing, it shall be held as soon as the circuit court's calendar permits within sixty days from the date the State requests a hearing. Following that evidentiary hearing, the circuit court may grant or deny Green's motion, within the appropriate exercise of its discretion and consistent with this opinion.

By the Court.—Order vacated and cause remanded with directions.

Publication in the official reports is not recommended.