

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 20, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 00-0047-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MICHAEL W. WORDEN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
STUART A. SCHWARTZ, Judge. *Affirmed in part; reversed in part.*

¶1 DYKMAN, P.J.<sup>1</sup> Michael W. Worden appeals from a judgment convicting him of four counts of unfair trade practices in violation of WIS. STAT. § 100.26(3) (1991-92) and sentencing him to four consecutive one-year terms of

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98).

incarceration. Worden argues that the sentencing court erroneously exercised its discretion by sentencing him to the maximum possible penalty due to his failure to pay restitution. He further argues that the sentencing court had no authority to prioritize the disbursement of his wages earned under the Huber law, nor did it have the authority to prohibit the Dane County jail from placing him in an electronic monitoring or home detention program. Because the sentencing court exercised reasonable discretion during sentencing and had statutory authorization to disburse wages earned under the Huber law, we affirm those parts of the court's judgment. However, because the sheriff, not the court, is authorized to make decisions regarding a prisoner's placement in an electronic monitoring or home detention program, we reverse that part of the judgment.

### **BACKGROUND**

¶2 In July 1991, Ellen Fehring contracted with Michael Worden for improvements on her home. Worden failed to complete the job, and exposed Fehring's home to substantial damage. The State filed a criminal complaint against Worden on January 7, 1993, for seven counts of misdemeanor unfair trade practices in violation of WIS. STAT. § 100.26(3) (1991-92), and one count of felony theft in violation of WIS. STAT. § 943.20(1)(b) (1991-92). On July 16, 1993, Worden pleaded no contest to four counts of misdemeanor unfair trade practices, and one count of misdemeanor retail theft from a separate occurrence. The other charges against him were dismissed. On November 30, 1993, Worden was sentenced to four years' probation, and ordered to pay \$12,430.08 in restitution to Fehring. Worden paid no restitution over the next year. His probation was revoked on November 23, 1994, and he was sentenced to six months in the Dane County jail with Huber work release privileges. Aside from Huber costs and a \$20 weekly stipend, the sentencing court ordered all of

Worden's wages to be applied to the restitution order. The sentencing court also imposed an additional six months in jail, which would be stayed if Worden kept up his restitution payments.

¶3 On June 5, 1995, Worden was released from jail. Worden continued to make restitution payments until December 1996, but absconded from probation on January 7, 1997. Worden was arrested on February 20, 1999, and his probation was again revoked on March 29, 1999. At that time, he still owed \$13,362.67 for restitution, including surcharges. On May 12, 1999, he was sentenced to four consecutive one-year terms in the Dane County jail with Huber work release privileges.<sup>2</sup> The sentencing court also ordered that restitution remaining be collected through the clerk of court. Finally, the sentencing court ordered that Worden would not be eligible for any home detention or electronic monitoring programs. Worden appeals.

## ANALYSIS

### (1) Sentencing Court's Discretion

¶4 Sentencing courts have a wide range of discretion. *See Anderson v. State*, 76 Wis. 2d 361, 363, 251 N.W.2d 768 (1977). We will not interfere unless the sentencing court erroneously exercised its discretion in passing sentence. *See State v. Macemon*, 113 Wis. 2d 662, 670, 335 N.W.2d 402 (1983). We limit review to whether the sentencing court stated the reasons for the sentence and the facts on which judgment was predicated. *See Anderson*, 76 Wis. 2d at 363. We will uphold a sentence "if the record showed a process of reasoning based on

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<sup>2</sup> Worden was also sentenced to pay four fines of twenty-five dollars each for the four counts of unfair trade practices and to ten days concurrent jail time for the count of retail theft.

legally relevant factors.” *Id.* at 364. The primary factors for consideration are “the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *McCleary v. State*, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971). Sentencing may be based on any one or more of these three primary factors. *See State v. Curbello-Rodriguez*, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984). Additional factors that the sentencing court may consider include the defendant’s criminal record; behavioral history; personality; degree of culpability; demeanor at trial; remorse, repentance and cooperativeness; the nature of the crime; the need for close rehabilitative control; and the rights of the public. *See id.* at 433. The weight afforded to each factor is within the wide discretion of the sentencing court. *See id.* at 434. We will not reweigh that court’s determination. *See Anderson*, 76 Wis. 2d at 367.

¶5 Worden argues that the sentencing court erroneously exercised its discretion at the May 12, 1999 sentencing because it did not give proper consideration to the three primary factors listed in *McCleary*. We disagree. The court carefully stated its reasons for the sentence imposed on Worden. In considering the first primary factor, the court stated that “the public needs protection from what I consider to be an unscrupulous and devious individual who would prey upon them by selling or promoting [his] skills and [his] abilities and then not carrying through on the contracts that have been entered into.” The court considered the second primary factor by examining all of Worden’s offenses together, concluding that “when one looks at the multitude of counts that are involved here, I think one can say in the aggravating situation we are talking here about some fairly serious behavior.” In considering the third and other factors, the court focused on Worden’s attitude toward his parole officer, his disregard of

probation, and his refusal to make any attempts towards restitution, and concluded:

Basically what we have here is a defendant who has indicated through his own choice a flagrant disregard to any orders of this [c]ourt and utter contempt for the entire system .... He is in my opinion still in total denial of the events and circumstances. He has demonstrated no remorse whatsoever or even a basic understanding .... I find Mr. Worden's attitude as relates to character to remain defiant, to indicate that he has no intentions of complying with any of the directives that this [c]ourt has entered in the past, nor that he would in the future having been revoked from his probationary status.

¶6 Worden also argues that the sentence was intended merely to enforce debt collection. We disagree. Worden relies on *State v. Olson*, 222 Wis. 2d 283, 588 N.W.2d 256 (Ct. App. 1998). In *Olson*, this court held that courts cannot use the criminal justice system “merely as a debt collector.” *Id.* at 297. In *Olson*, the circuit court extended the defendant's probation solely because there was still a balance due on the defendant's restitution. *See id.* at 296-97. In reversing the circuit court's extension, we emphasized that the defendant had complied with all the terms of his probation. *See id.* at 297.

¶7 Worden's behavior is distinguishable from the defendant's in *Olson*. Worden did not comply with his terms of probation, and he absconded from probation for over two years. In reviewing the three primary factors to be considered in sentencing, the sentencing court cited a number of such legitimate reasons for Worden's sentence. Worden's failure to make restitution was just one factor in the sentencing court's decision.

¶8 As the sentencing transcript illustrates, the sentencing court addressed all three of the primary factors to be considered, as well as many of the

additional factors. There is ample evidence in the record to support the facts from which the sentencing court drew its conclusions. Accordingly, we conclude that the sentencing court did not erroneously exercise its discretion by sentencing Worden to the maximum jail time on all four counts of unfair trade practices.

(2) Sentencing Court's Authority to Order  
Disbursement of Worden's Wages

¶9 Worden also maintains that the sentencing court lacked authority under WIS. STAT. § 303.08 (1997-98) to order the disbursement of his wages after his probation was revoked. He contends that after revocation, the restitution should have been reduced to a civil judgment, therefore making it ineligible for enforcement under § 303.08. We disagree. It is true that language in the restitution statutes states that “after the termination of probation, extended supervision or parole ... restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim.” WIS. STAT. § 973.20(1r) (1997-98). But, Worden's probation did not simply terminate. Instead, it was revoked, and the sentencing court then imposed a sentence. Furthermore, § 973.20(1r) requires that a court order restitution “when imposing sentence.” We therefore conclude that disbursement of Worden's wages according to § 303.08 was appropriate.

¶10 Worden further contends that the sentencing court did not order disbursement of his wages in accordance with WIS. STAT. § 303.08. This is a matter of statutory construction. Statutory construction presents a question of law that we review de novo. *See State ex rel. Frederick v. McCaughtry*, 173 Wis. 2d 222, 225, 496 N.W.2d 177 (Ct. App. 1992). If the language of a statute is unambiguous, we give the language its ordinary meaning. *See id.* at 225-26.

¶11 We conclude that the sentencing court complied with WIS. STAT. § 303.08 in ordering the disbursement of Worden's wages. Section 303.08 provides:

(5) *By order of the court, the wages, salary and unemployment insurance and employment training benefits received by prisoners shall be disbursed by the sheriff for the following purposes, in the order stated:*

- (a) The board of the prisoner;
- (b) Necessary travel expense to and from work and other incidental expenses of the prisoner;
- (c) Support of the prisoner's dependent's, if any;
- (d) Payment, either in full or ratably, of the prisoner's obligations acknowledged by the prisoner in writing or which have been reduced to judgment;
- (e) The balance, if any, to the prisoner upon the prisoner's discharge.

WISCONSIN STAT. § 303.08(5) (1997-98) (emphasis added). This section unambiguously requires the sentencing court to order the disbursement of a prisoner's wages for the five purposes stated, in order of priority from (a) to (e). Here, the sentencing court provided for subsections (a) and (b) by allowing for room and board plus a weekly stipend.<sup>3</sup> Subsection (c) does not apply because Worden does not have any dependents. Finally, because Worden owed restitution as part of the judgment against him, the sentencing court properly ordered payment of this obligation out of Worden's work release wages as provided in subsection (d).

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<sup>3</sup> The sentencing court ordered a \$20 weekly stipend for Worden's personal use during his probation review hearing on November 23, 1994. Although a stipend is not mentioned in the final sentencing transcript, both parties have assumed its existence in their briefs. In addition, at the sentencing on May 12, 1999, the sentencing court stated its intention to adopt the state's recommendation for sentencing, which included a stipend.

(3) Sentencing Court's Authority to Prohibit Worden's  
Placement in an Electronic Monitoring or Home Detention Program

¶12 Worden argues that the sentencing court erred by prohibiting his placement in an electronic monitoring or home detention program. He contends that the authority to place a prisoner in such programs lies with the county sheriff. We agree. WISCONSIN STAT. § 302.425(2) (1997-98) expressly grants a county sheriff such authority. Moreover, WIS. STAT. § 59.27(1) (1997-98) charges a sheriff with the duty to “[t]ake the charge and custody” of persons in a jail. This authority is delegated by statute to the sheriff, and there is no law that grants similar authority to the courts. *See State v. Eastman*, 220 Wis. 2d 330, 337-38, 582 N.W.2d 749 (Ct. App. 1998). Accordingly, we reverse this part of the sentence.

**CONCLUSION**

¶13 We affirm the part of the lower court's judgment imposing a sentence of four years in the Dane County jail, as well as the part of the judgment ordering disbursement of Worden's wages. We reverse the part of the judgment prohibiting Worden's placement in an electronic monitoring or home detention program, and leave that decision to the discretion of the Dane County sheriff.

*By the Court.*—Judgment affirmed in part and reversed in part.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4 (1997-98).



