

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 18, 2006**

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. 2005AP2235-CR**

**Cir. Ct. No. 2001CF2244**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LADARWIN D. COPELAND,**

**DEFENDANT-APPELLANT.**

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APPEAL from orders of the circuit court for Milwaukee County:  
MARY M. KUHNMUENCH and JEFFREY A. WAGNER, Judges. *Affirmed.*

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

¶1 PER CURIAM. Ladarwin D. Copeland appeals from an order for reconfinement after revocation of extended supervision and an order denying his motion for resentencing after revocation of extended supervision. Copeland argues that his reconfinement was based upon inadequate sentencing information

because the trial court failed to review the original sentencing transcript. Because reconfinement does not constitute “sentencing,” the trial court was not required to review the original sentencing transcript when considering the appropriate term of reconfinement. Accordingly, we affirm.

## BACKGROUND

¶2 On December 20, 2001, Copeland entered an *Alford* plea<sup>1</sup> to one count of operating a vehicle without the owner’s consent, contrary to WIS. STAT. § 943.23(3) (2001-02),<sup>2</sup> and pled guilty to one count of possession of tetrahydrocannabinols (THC), contrary to WIS. STAT. § 961.41(3g)(e). The circuit court sentenced Copeland to two years of initial confinement and two years of extended supervision on the operating a vehicle charge, and a concurrent sentence of nine months in the House of Correction for the THC charge.

¶3 Copeland completed the confinement portion of his bifurcated sentence and was released to extended supervision on July 20, 2004. Subsequently, the Department of Corrections (DOC) determined that Copeland violated his rules of supervision. A revocation hearing was conducted on February 7, 2005, at which time the DOC revoked Copeland’s extended supervision. The DOC further recommended that Copeland serve the remainder of his sentence in confinement, a period of ten months and twenty-one days.

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<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

<sup>2</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶4 On March 31, 2005, a reconfinement hearing was held before a different circuit court judge than the one who originally sentenced Copeland. Based upon its review of the DOC's recommendation, the court ordered Copeland reconfined for ten months and twenty-one days. The court did not indicate that it had considered the original sentencing transcript before ordering Copeland's reconfinement.

¶5 Copeland subsequently filed a postconviction motion seeking resentencing after revocation of his extended supervision on the basis that the circuit court misused its discretion by not reviewing the original sentencing transcript. The circuit court denied this motion on the ground that it was under no obligation to review the transcript. This appeal followed.

### DISCUSSION

¶6 Copeland contends that, under *State v. Swiams*, 2004 WI App 217, 277 Wis. 2d 400, 690 N.W.2d 452, his reconfinement hearing constituted a sentencing hearing. He further contends that, because his reconfinement hearing was a sentencing, the circuit court was required by *State v. Reynolds*, 2002 WI App 15, ¶9, 249 Wis. 2d 798, 643 N.W.2d 165, to review the original sentencing transcript at this hearing.

¶7 We review a sentence imposed by a circuit court to determine whether the court erroneously exercised its discretion. *State v. Spears*, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999). “Discretion is not synonymous with decision-making”; rather, it “depend[s] on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a

logical rationale founded upon proper legal standards.” *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971).

¶8 Copeland contends that the circuit court’s failure to review the original sentencing transcript prior to ordering reconfinement was a violation of the sentencing rule set forth in *Reynolds*. This court has held, however, that the *Reynolds* rule does not apply to reconfinement hearings. *State v. Jones*, 2005 WI App 259, \_\_\_ Wis. 2d \_\_\_, 707 N.W.2d 876. *Reynolds* applies to proceedings where “a different judge impose[s] sentence *for the first time*.” *Jones*, 707 N.W.2d 876, ¶13. A reconfinement hearing, however, possesses a “significant and meaningful difference in [its] procedural background” from an original sentencing. *Id.* Reconfinement is distinguished from original sentencing because it is limited to the time remaining on a bifurcated sentence. *See id.*

¶9 Here, the circuit court was under no obligation to conduct a review of the original sentencing transcript because the nature of a reconfinement hearing is substantially different than an original sentencing. Further, the court reviewed and considered the contents of the DOC report recommending Copeland’s reconfinement. The report detailed Copeland’s extended supervision violations and the reasons for revocation and recommendation of reconfinement. The court’s order for reconfinement for ten months and twenty-one days was reasonably based upon this report. Finally, Copeland waived his right to contest the failure of the circuit court to review the original sentencing transcript because he never requested such a review. *Cf. State v. Groth*, 2002 WI App 299, ¶24, 258 Wis. 2d 889, 655 N.W.2d 163. For these reasons, we conclude that the circuit court properly exercised its discretion based on facts of record and imposed a reconfinement sentence that is founded on the proper legal standards.

Accordingly, we affirm the circuit court's order for reconfinement and the order denying Copeland's motion for resentencing after revocation.

*By the Court.*—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

