COURT OF APPEALS
DECISION
DATED AND FILED

September 28, 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. 2005AP2423-CR **Cir. Ct. No. 2000CF5580**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAUL R. RODRIGUEZ,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed*.

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Raul Rodriguez appeals an order for reconfinement after revocation of extended supervision, and an order denying his motion for postconviction relief. We affirm.

¶2 Rodriguez was convicted of one count of false imprisonment. The court imposed a sentence of eighteen months initial confinement and three years extended supervision. In 2004, his supervision was revoked and he was returned to the court for a reconfinement determination, with a remaining available incarceration time of three years and five days. The Department of Corrections recommended one year, three months, while the administrative law judge (ALJ) recommended two years, and the State argued for the maximum. The court imposed the maximum. Rodriguez then filed a postconviction motion for relief from that order, which the court denied without a hearing.

¶3 On appeal, Rodriguez first argues that the court did not meaningfully exercise its discretion in either the reconfinement decision or the denial of the postconviction motion. We disagree. While the court did not make an extended reconfinement discussion, the court noted appropriate factors, such as the "extremely severe" original offense involving domestic violence, Rodriguez's "not good" adjustment to supervision, and serious new violations of law. The discussion was adequate. *See* ***State v. Jones***, 2005 WI App 259, ¶7, 288 Wis. 2d 475, 707 N.W.2d 876 (a sentence should generally be affirmed if the facts are fairly inferable from the record and the sentencing court's rationale indicates that it is founded upon legally relevant factors).

¶4 Rodriguez next argues that the court overemphasized its disagreement with the Department of Corrections policy, as described by the agent at the hearing, that controls the length of the agents' reconfinement recommendations in most cases. While it is true that the court spent a considerable portion of the sentencing hearing in discussion with the agent about that policy, there is no indication in the actual sentencing portion of the hearing that the court's views about that policy directly affected Rodriguez's sentence.

There is no indication, for example, that the court gave Rodriguez a longer sentence specifically to emphasize its disagreement with the recommendation produced by the Department policy. It may be that the court placed less weight on the agent's recommendation because of the way the recommendation was shaped by the policy, but Rodriguez has not argued that it would be improper for the court to use the policy in that manner, and we do not address the point.

¶5 Rodriguez next argues that the court either relied on incorrect information about events in Outagamie County, or that later developments on those events should be considered a new factor. We conclude that neither argument establishes error. The first argument is that at the reconfinement hearing the court relied on described events and charges in Outagamie County, which Rodriguez factually disputed, and he argues that the court should have resolved the dispute. This argument fails because the information the court relied on at the time of the reconfinement decision was not incorrect. The ALJ revoking Rodriguez's supervision had already determined that conduct of the type described by the court did occur, and the court was provided with that ALJ'S decision for the reconfinement hearing. Therefore, the court could reasonably regard that factual dispute as already resolved against Rodriguez, even if the charges themselves were still pending; as Rodriguez concedes, the court was not limited to considering only convictions.

¶6 We also reject Rodriguez's argument that the later non-charging, amendment or dismissal of those charges constitute a new factor warranting reconsideration of the original reconfinement sentence. Rodriguez's argument is that these developments corroborate his version of events. While that is one reading of the Outagamie County events, it is certainly not the only possible one. Amendment or dismissal of charges, or non-charging of criminal conduct, can

occur for a variety of reasons that do not establish, or even imply, actual innocence. Rodriguez points to nothing in the record showing the actual reason in this case for the prosecutorial decisions not to seek convictions for the conduct found by the ALJ to have occurred.

By the Court.—Orders affirmed.

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