

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 12, 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. 2005AP274

Cir. Ct. No. 2000CF947

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TERRANCE L. WARREN,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JOHN SIEFERT, Judge. *Affirmed.*

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

¶1 PER CURIAM. Terrance L. Warren appeals from a reconfinement order and a related postconviction order. The issue is whether the trial court erroneously exercised its discretion in imposing the maximum available reconfinement period by simply agreeing with the Administrative Law Judge's

assessment that Warren should be reconfined for the entirety of his available term. We conclude that the trial court's reasons for imposing the remainder of Warren's reconfinement period constituted a proper exercise of discretion. Therefore, we affirm.

¶2 Warren pled guilty to delivering no more than five grams of cocaine, in violation of WIS. STAT. § 961.41(1)(cm)1. (amended Dec. 31, 1999); the trial court imposed and stayed the five-year maximum sentence, comprised of two- and three-year respective periods of confinement and extended supervision, and imposed a four-year period of probation. Warren's probation was revoked and he served his two-year period of confinement. After being released to extended supervision, Warren's supervision was revoked. The trial court reconfined Warren for a six-month term, and he was again released to extended supervision. Warren's supervision was again revoked and he was returned to the trial court. The trial court ordered Warren reconfined for the entirety of the remaining period, which was two years, six months, and eleven days. Warren challenged that reconfinement order by postconviction motion, which the trial court denied. Warren appeals from the reconfinement order and the postconviction order denying his related challenge.

¶3 Warren contends that the trial court erroneously exercised its discretion in: (1) failing to articulate its reasoning in determining that he should be reconfined for the maximum period available, two years, six months and eleven days; (2) failing to explain how the maximum reconfinement period constituted the minimum amount of custody necessary to achieve the reconfinement considerations ("minimum custody standard"); and (3) ignoring the parties' recommendations. We conclude that the trial court's exercise of discretion is

sufficient to support its reconfinement order and, consequently, its related postconviction order.

¶4 WISCONSIN STAT. § 302.113(9)(am) (amended Feb. 1, 2003) provides:

If a person released to extended supervision ... violates a condition of extended supervision, the reviewing authority may revoke the extended supervision of the person. *If the extended supervision of the person is revoked, the person shall be returned to the circuit court for the county in which the person was convicted of the offense for which he or she was on extended supervision, and the court shall order the person to be returned to prison for any specified period of time that does not exceed the time remaining on the bifurcated sentence.*

Id. (emphasis added).

¶5 Warren's extended supervision was most recently revoked because he violated various conditions of his supervision, including physically assaulting a woman, and failing to report to his Department of Corrections agent. The Milwaukee Police Department also was investigating his alleged sexual involvement with a thirteen-year-old girl.

¶6 The entirety of Warren's available period for reconfinement was two years, six months and eleven days. The State recommended a one- to two-year consecutive reconfinement period.¹ The Department recommended a one-year, six-month, six-day concurrent reconfinement period. Warren recommended limiting his reconfinement period to time he had already served, or to a concurrent

¹ The concurrent and consecutive references are to a reconfinement period imposed for a revocation in a different matter.

one-year period. The Administrative Law Judge expressly rejected the Department's recommendation, commenting that it was "grossly inadequate" and that "[c]onfinement for the entire time available [wa]s appropriate and necessary to protect the public from Mr. Warren."

¶7 The trial court read the Administrative Law Judge's comments and declared that it "agree[d] with her assessment." The trial court then imposed the entire two-year, six-month and eleven-day period. Prior to deciding to impose the maximum available period for reconfinement, the trial court acknowledged that Warren had failed on probation and had absconded from supervision. Immediately after imposing the maximum reconfinement period, the trial court continued

there is no possibility, in [its] view, that [Warren] will be compliant with extended supervision – further extended supervision. [Warren's] treatment needs cannot be met in the community-based situation, and quite frankly, the public needs to be protected from [him], and not to reconfine [him] for the entire two years, six months, and 11 days would unduly depreciate the seriousness of [Warren's] behavior while out on extended supervision.

Finally, in doing this, [the trial court] d[oes]n't consider the allegation on the sexual assault [of the thirteen-year-old girl], not because they are not serious allegations. They are very serious, and particularly because the alleged victim is noted to be developmentally disabled. It's just that [the trial court has] reached the conclusion that the entire two years, six months, 11 days are needed for reconfinement without considering that particular factor. So [the trial court] do[es]n't consider it.

¶8 Warren characterizes the trial court's comments as an afterthought. Although these comments were subsequent to its imposition of the maximum reconfinement period, the trial court simply imposed the reconfinement period first and then explained its reasoning. The trial court also expressed its agreement

with the Administrative Law Judge's assessment to impose the maximum available period. We do not view that agreement as a "rubber-stamp[]," as characterized by Warren, but as the trial court expressing its agreement without reiterating Warren's supervision history, which would have become redundant.

¶9 The trial court, in deciding what period to impose for an offender's reconfinement, is limited in its authority. Sentence was already imposed. The offender had already violated conditions of supervision. The trial court only had to determine how much of the remaining period should be imposed for reconfinement for an offender's violation of the conditions of supervision. *See* WIS. STAT. § 302.113(9)(am) (amended Feb. 1, 2003). A proper exercise of discretion requires a reasoned and reasonable determination. *See McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W. 2d 512 (1971). We conclude that the trial court fulfilled its limited role in exercising its discretion to determine the period of reconfinement to impose on an offender whose supervision has been repeatedly revoked for significant violations of his conditions of supervision. The trial court's presumption that Warren was unlikely to comply with future conditions of supervision was factually justified.

¶10 Warren's postconviction motion, challenging the reconfinement period, provided the trial court with an additional opportunity to explain its determination. The trial court explained that it relied on the Department's summary of Warren's supervision history. "[Warren's] repeated non-compliance on supervision was clearly an aggravating factor in the court's reconfinement determination." This postconviction explanation further bolstered the trial court's exercise of discretion. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT.
RULE 809.23(1)(b)5. (2003-04).

