

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 25, 2007

A. John Voelker
Acting 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. 2006AP1207-CR

Cir. Ct. No. 2005CF77

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

SAMUEL F. ROLOFF,

DEFENDANT-RESPONDENT.

APPEAL from judgments of the circuit court for Waupaca County:
PHILIP M. KIRK, Judge. *Reversed and cause remanded with directions.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. The State appeals judgments convicting Samuel Roloff on three felony counts involving sexual activity with underage girls. The issue is whether the provisions of Roloff's sentences, both as announced and later amended, exceeded the trial court's authority. In effect, the trial court sought to

ameliorate the effects of the sex offender registration requirement. The court reviewed evidence, and concluded that Roloff was not the type of person the legislature intended to cover when it imposed the sex offender registration requirement. In the trial court's view, there was "prosecutorial overreaching." We agree with the State, however, that the trial court exceeded its authority, and therefore reverse.

¶2 The State charged Roloff with numerous felonies and misdemeanors related to sexual activity with underage girls. He subsequently entered no contest pleas to three misdemeanor counts, and to felony charges of second-degree sexual assault of a child, sexual exploitation of a child, and causing a child to view sexual activity. The court imposed and stayed sentences on the misdemeanors and placed Roloff on probation for three years. At a later date, the court addressed Roloff's felony convictions.

¶3 With respect to all three felonies, the court withheld sentence and imposed probationary terms, concurrent to each other and to the misdemeanor probations. The court also ordered Roloff to register as a sex offender. However, the court then stayed entry of the judgment of conviction, commencement of the probationary terms, and sex offender registration for 100 years. The court indicated that it believed the misdemeanor punishments were sufficient and that sex offender registration was not appropriate in light of the circumstances of the crimes.

¶4 Ten days after the felony sentencing proceeding, the court amended the disposition on one of the three felonies from probation to a small fine. A judgment was entered on that disposition, with no stay of the fine, although the 100-year stay of sex offender registration remained in place. A separate judgment

of conviction was entered on the other two counts, again providing that entry of the judgment, commencement of the probationary terms, and sex offender registration be stayed 100 years, to November 28, 2105. On appeal, the State contends that the court lacked authority to stay the felony probationary terms and authority to stay the sex offender registration requirement, and to replace one of the terms of probation with a minimal fine.

¶5 We agree that the trial court lacked authority to defer or, practically speaking, to eliminate Roloff’s mandatory sex offender registration. Registration is a requirement for persons convicted of certain sex crimes, including each of Roloff’s three felonies. See WIS. STAT. § 301.45(1d)(b) & (1g)(a) (2003-04).¹ A person placed on probation for one of these crimes is subject to registration “upon being placed on probation or supervision.” WIS. STAT. § 301.45(3)(a)1. Except in special circumstances not applicable here, when a court imposes sentence or places a person on probation for a listed crime, “the court shall require the person to comply with the reporting requirements under s. 301.45.” WIS. STAT. § 973.048(2m). If the language of a statute is plain and unambiguous, we apply it as written. See *State v. Moran*, 2005 WI 115, ¶¶26, 284 Wis. 2d 24, 700 N.W.2d 884. Here, the statutory scheme plainly imposes a non-discretionary duty on the sentencing court to order registration for sex offenders without delay. The sex offender registration statute applies to its subjects “automatically, as a matter of law.” *State v. Martel*, 2003 WI 70, ¶15, 262 Wis. 2d 483, 664 N.W.2d 69. The court’s deferral in this case defeats that clear intent.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶6 The trial court lacked authority to stay the felony probation terms. By imposing and then staying the felony probation terms, the court effectively made them consecutive to the previously imposed misdemeanor probations. Wisconsin courts lack authority to order consecutive probation. *State v. Schwebke*, 2001 WI App 99, ¶29, 242 Wis. 2d 585, 627 N.W.2d 213, *aff'd*, 2002 WI 55, 253 Wis. 2d 1, 644 N.W.2d 666. Additionally, staying all of the consequences of a felony conviction for 100 years is the equivalent of imposing no sentence at all, and there is no authority for the proposition that a trial court can avoid sentencing a convicted defendant by this means, or any other.

¶7 Furthermore, the trial court lacked authority to amend one of the felony sentences days after imposing it. The trial court has authority to modify a sentence, but must exercise that authority within defined parameters. *State v. Crochiere*, 2004 WI 78, ¶12, 273 Wis. 2d 57, 681 N.W.2d 524. It is an erroneous exercise of discretion to modify a sentence simply because, on further reflection, the court decides to impose a different sentence. *See id.*

¶8 Roloff's brief does not adequately address the dispositive issues. Instead, he defends a decision not challenged on appeal, namely, the trial court's initial decision to enter judgment on the misdemeanors while deferring entry of judgment and sentencing on the felonies. Roloff's argument provides this court with no help because it is the trial court's subsequent decisions on the felonies that are the subjects of this appeal. Roloff's focus on the initial sentencing proceeding, which later events rendered irrelevant, may be an implicit concession that he cannot defend the trial court's subsequent sentencing decisions.

¶9 On remand, the trial court shall enter an amended judgment vacating the fine and reinstating probation on count 4, removing the 100-year stay on the

probationary terms, and directing Roloff to immediately register as a sex offender on his felony convictions.

By the Court.—Judgments reversed and cause remanded with directions.

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

