

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 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. 2006AP1699-CR

Cir. Ct. No. 2002CF137

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RODNEY E. ARMSTRONG,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Columbia County:
RICHARD REHM, Judge. *Reversed and cause remanded.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Rodney Armstrong appeals from an order requiring him to continue serving a one-year jail term imposed as a condition of probation. He contended in the trial court, and now contends on appeal, that he completed the

jail term while imprisoned on an unrelated conviction. We agree that Armstrong has completed his term, and therefore reverse.

¶2 In this sexual assault prosecution the trial court withheld sentence and placed Armstrong on probation for eight years, with a year in jail as a condition of probation. Armstrong began serving the term in the Columbia County jail, but was then transferred to prison on revocation of his parole in a separate case. He was released from prison in January 2006, and reincarcerated in Columbia County to serve out the remainder of his conditional jail term, less the time served in jail before his prison transfer. He moved for release, contending that he continued serving the one-year conditional term after his transfer to prison, and had therefore completed it. The trial court denied relief, resulting in this appeal.

¶3 In *State v. Yanick*, 2007 WI App 30, ¶1, No. 2006AP849-CR, we held that a person serving conditional jail time, whose term is interrupted by a transfer to prison on an unrelated sentence, remains in conditional jail time status and continues to serve the conditional term while in prison. There are no significant factual distinctions between Armstrong's case and Yanick's. The same rule necessarily applies to both. Therefore, under the holding in *Yanick*, Armstrong completed his conditional jail term while serving his prison sentence. We reverse the order for continued incarceration and instruct the court on remand to enter an order deeming Armstrong's jail term completed.

By the Court.—Order reversed and cause remanded.

This opinion will not be published.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

