

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 20, 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. 2005AP2611

Cir. Ct. No. 2002CF6030

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RALPH E. GRIFFIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ralph E. Griffin appeals *pro se* from an amended order denying his motion for reconsideration of the trial court's denial of his

request for sentence modification.¹ The issue is whether the trial court erroneously exercised its sentencing discretion.² We conclude that the trial court's bifurcation of the minimum term of imprisonment was proper pursuant to *State v. Cole*, 2003 WI 59, ¶10, 262 Wis. 2d 167, 663 N.W.2d 700. Therefore, we affirm.

¶2 The trial court applied the proper legal standards to the relevant facts. We therefore incorporate and adopt the trial court's attached decision and affirm its amended order. *See* WIS. CT. APP. IOP VI(5)(a) (Oct. 14, 2003) (court of appeals may adopt trial court's opinion).

By the Court.—Order affirmed.

This opinion will not be published.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

¹ The trial court decided the merits of Griffin's motion before Griffin had filed his reply brief. The reply briefing deadline had been shortened because the State had filed its response approximately one month early. The trial court issued an amended order incorporating its previously issued order to clarify that thereafter Griffin had belatedly filed his reply brief, however "[b]ecause of the possible confusion regarding the due date, the court will accept the defendant's reply brief as timely filed." Nothing in Griffin's reply brief, however, "persuade[d] the court to alter its ... decision, which the court incorporates by reference herein." Although Griffin appeals from the amended order, the merits of this issue are addressed in the order.

² Griffin raises the related issue that the trial court may deviate from a presumptive minimum term and impose a lesser sentence. The trial court was aware at sentencing that in this case it was empowered to impose a sentence below the presumptive minimum sentence, if circumstances warranted. *See State v. Cole*, 2003 WI 59, ¶15, 262 Wis. 2d 167, 663 N.W.2d 700 (addressing WIS. STAT. § 961.438 (2001-02)). The trial court preliminarily commented that circumstances did not so warrant. Griffin pursues that contention only to allege that the trial court had the discretion to deviate from the presumptive minimum sentence. He does not explain how the facts of his case would have warranted such a deviation.

Griffin also urges us to rely on *State v. (Keith) Griffin*, No. 2003AP1150-CR, unpublished slip op. (WI App June 16, 2004), rather than on *Cole*. *Griffin* is unpublished and is of no precedential value, and should not have even been cited by Griffin. *See* WIS. STAT. RULE 809.23(3) (2003-04).

