

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 8, 2001**

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.

**No. 00-2463-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANNETTE L. MEMMER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Annette Memmer appeals a judgment of conviction entered after revocation of probation and an order denying her postconviction motion. The issue is whether she received ineffective assistance of counsel during probation revocation proceedings. We affirm.

¶2 This is an appeal of the sentence imposed after revocation of probation. Memmer filed a postconviction motion, arguing that her counsel in the probation revocation proceeding was ineffective for not making a certain double jeopardy argument and that the penalty for that violation should have been an extension of probation, rather than probation revocation. The circuit court held an evidentiary hearing, at which revocation counsel testified, and then the court denied Memmer's motion. As the State points out, there are significant procedural problems with Memmer's attempt to raise the issue in this proceeding, but the State urges us to address the merits because the circuit court has already held an evidentiary hearing and ruled on the issue. We will review the merits.

¶3 At Memmer's original sentencing hearing, the circuit court withheld sentence and placed her on probation. In addition, the court imposed ninety days of jail time as a condition of probation. However, the court left it to the discretion of the Department of Corrections as to when that time would be served. It directed that the Department could impose the jail time in response to violations of the conditions of probation. However, when Memmer later violated her probation, according to her motion, the Department both started revocation proceedings and imposed the jail time.

¶4 Memmer argues that there were two separate, but similar, violations of her right to be free from double jeopardy. Her first argument is that it was double jeopardy to both serve jail time and have her probation revoked, when both occurred as a result of the same acts that violated her probation. In other words, she is arguing that she has been punished twice for the single series of probation violations, first by serving jail time and then by having her probation revoked. Her second argument is that both of these punishments were imposed for the

criminal conduct for which she was placed on probation and, therefore, she has been subjected to double jeopardy for that conduct.

¶5 Ordinarily, the term “jeopardy” applies to criminal prosecution and proceedings to invoke criminal punishment for the vindication of public justice, and a proceeding is considered to be criminal if it imposes a sanction intended as punishment. *State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 383, 260 N.W.2d 727 (1978). Parole and probation revocations are not punishment. *See id.* at 385-87. The purposes of probation are rehabilitation of offenders and protection of the community interest. *State v. Heyn*, 155 Wis. 2d 621, 629, 456 N.W.2d 157 (1990). Incarceration as a condition of probation is for the purpose of rehabilitation and to protect society. *See State v. Hays*, 173 Wis. 2d 439, 444-45, 496 N.W.2d 645 (Ct. App. 1992). Memmer cites no case law holding that either sanctions for probation violations or revocation of probation are generally considered to be punishment for the original criminal conduct or for the acts that violated probation. Therefore, in light of earlier case law, we reject the argument.

¶6 To the extent there is any double jeopardy concern that Memmer will spend an excessive amount of time incarcerated because she served jail time as a condition of probation and was then also sentenced to prison, that concern is addressed by the fact that she was given appropriate sentence credit for that jail time.

¶7 Finally, we note that in this case the circuit court stayed jail time as a condition of probation, and granted the Department of Corrections the authority to impose that jail time. The State conceded on appeal that the circuit court lacked authority to delegate its sentencing authority in this fashion. We agree. *See State v. Fearing*, 2000 WI App 229, ¶¶2, 22, 239 Wis. 2d 105, 619 N.W.2d 115.

However, this error has no bearing on the argument Memmer has made in this appeal.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

