

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 2007

David R. Schanker
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. 2007AP986

Cir. Ct. No. 2006CV6

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CURTIS J. CELSKE,

PETITIONER-APPELLANT,

V.

**DAVID H. SCHWARZ, ADMINISTRATOR, DIVISION OF HEARINGS AND
APPEALS,**

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Rusk County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Higginbotham, JJ.

¶1 PER CURIAM. Curtis Celske appeals an order upholding his parole revocation. He argues he was no longer on parole when he was revoked. We disagree and affirm the order.

BACKGROUND

¶2 Celske’s current revocation is based on two earlier sentences. The first sentence is for a November 1992 burglary conviction. In that case, the court imposed and stayed a sentence of six and one-half years, and placed Celske on probation for five years. The second sentence is for an April 1996 substantial battery conviction. In that case, Celske was sentenced to eight years, consecutive to any other sentence.

¶3 In August 1995, the department of corrections filed a “violation investigation report” alleging Celske violated his probation on the 1992 burglary. The department also filed a detainer directing the Milwaukee County Jail to hold Celske on the probation violation.¹ In October 1995, Celske’s probation was revoked. Celske appealed the revocation to circuit court, then to this court. *See State ex rel. Celske v. Schwarz*, No. 1997AP1980, unpublished summary order (Wis. Ct. App. July 13, 1998).² We ordered a new revocation hearing, which was held in October 1998. At the new hearing, Celske’s probation was again revoked.³

¶4 Celske was released on parole in September 2004. In August 2005, the department revoked his parole because of four rule violations. On appeal, the division of hearings and appeals concluded the department had proven three of the four alleged rule violations, and ordered eighteen months of reincarceration.

¹ The probation violation involved the same conduct that ultimately led to the 1996 battery conviction.

² In his brief, Celske indicates the appeal was to the Seventh Circuit Court of Appeals. However, the order he cites to is from this court.

³ The facts regarding the October 1998 hearing are taken from our opinion in *Celske v. Champagne*, No. 2004AP2619, unpublished slip op. (WI App Nov. 15, 2006).

Celske appealed to the circuit court by writ of certiorari, and the court affirmed the division's decision.

DISCUSSION

¶5 This case is a dispute over the length of Celske's sentence. According to the State, Celske is currently serving a fourteen and one-half year sentence—six and one-half years for his burglary conviction, plus eight consecutive years for his battery conviction. Celske argues he should be serving only the eight-year sentence from his battery conviction, and he therefore was no longer on parole in 2005.

¶6 Celske argues he should not be serving any sentence for his 1992 burglary conviction because of the delay between the beginning of revocation proceedings in 1995 and his revocation hearing in October 1998. As we understand his argument, Celske contends his five-year probation term continued to run between 1995 and the 1998 hearing, and expired in November 1997, prior to the 1998 revocation hearing. According to Celske, this means the 1998 revocation was invalid, and the six and one-half year sentence imposed on revocation was likewise invalid.⁴

¶7 Celske's argument is contrary to WIS. STAT. § 304.072(3) (1995-96). That section provides, in relevant part:

⁴ Parts of Celske's brief can be read as arguing the two sentences should have run concurrent with each other. However, the court ordered the 1996 sentence to run consecutive to all other sentences. To the extent Celske argues he is entitled to concurrent sentences due to an administrative error, his argument is undeveloped and not supported by any authority, and we decline to address it. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (inadequately briefed issues will not be addressed).

[The department] preserves jurisdiction over a probationer or parolee if it commences an investigation, issues a violation report or issues an apprehension request concerning an alleged violation prior to the expiration of the probationer's or parolee's term of supervision.

It is undisputed that the department issued a "violation investigation report" in August 1995, while Celske was still on probation for the 1992 burglary. The department therefore retained jurisdiction to revoke his probation for the incidents alleged in that report.

¶8 Celske concedes this statute gives the department jurisdiction over the 1998 revocation. He argues, however, that the department never tolled his probation term according to its internal operating procedures. According to Celske, the department's internal procedures require a probation agent to fill out a form called a "DOC-44" in order to toll a probation term. Apparently, this form was never filled out in his case.

¶9 However, even assuming Celske's reading of the department's internal procedures is correct,⁵ Celske does not cite any authority indicating those operating procedures supersede WIS. STAT. § 304.072(3) (1995-96).⁶ Section 304.072(3) specifically allows the department to retain jurisdiction over revocation

⁵ The portion of the internal procedures Celske supplies appears to only require a form "DOC-44" to *restart* a probation term that has been tolled, not to toll it in the first place.

⁶ Celske cites cases indicating that an agency is bound by its own regulations in certain instances. *See, e.g., Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980). However, the department's internal procedures are not agency regulations. The department's regulations are found in the Wisconsin Administrative Code. *See* WIS. ADMIN. CODE §§ DOC 302-399 (Dec. 2006).

proceedings by commencing an investigation or issuing a violation report. That is exactly what happened here.⁷

By the Court.—Order affirmed.

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

⁷ The State argues Celske's claim is barred by issue preclusion. We need not reach this alternative argument. See *Patrick Fur Farm, Inc. v. United Vaccines, Inc.*, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 (court of appeals decides cases on the narrowest possible grounds).

