

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 25, 2011**

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. 2010AP669-CR**

**Cir. Ct. No. 2000CF4799**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ANTHONY MURPHY, A/K/A ANDREW MORRIS,**

**DEFENDANT-APPELLANT.**

---

APPEAL from an order of the circuit court for Milwaukee County:  
DANIEL L. KONKOL, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Anthony Murphy, a/k/a Andrew Morris, appeals *pro se* from an order that denied his motion for resentencing. He claims that his twenty-year sentence for aggravated battery while armed with a dangerous weapon is excessive because it exceeds the statutory presumptive minimum term. He

further claims that the circuit court erred by failing to state how many years of his sentence were imposed for committing aggravated battery and how many years were imposed for using a dangerous weapon to commit the crime. We reject his arguments and affirm the circuit court's order.

¶2 A jury convicted Murphy of aggravated battery while armed.<sup>1</sup> The trial testimony reflected that in September 2000 he punched a woman and beat her with an electric iron. He broke her jaw and several of her teeth, blackened her eye, fractured her hands, and choked her until she lost consciousness. Her brain swelled, and she required five staples to close a gash to her head. Under the law in effect at the time of the offense, Murphy faced a maximum sentence of fifteen years of imprisonment for committing aggravated battery and an additional five years of imprisonment for using a dangerous weapon to commit the offense. *See* WIS. STAT. §§ 940.19(5), 939.50(3)(c), 939.63(1)(a)2. (1999-2000).<sup>2</sup> The circuit court imposed the maximum twenty-year sentence, bifurcated as fifteen years of initial confinement and five years of extended supervision. Murphy appealed, and we affirmed. *State v. Murphy*, No. 2001AP1817-CR, unpublished slip op. (WI App Mar. 12, 2002).

¶3 Murphy now claims that he is imprisoned under an illegal sentence. His arguments are premised on a misreading of the applicable statute and a misunderstanding of the circuit court's obligations at sentencing.

---

<sup>1</sup> The jury also convicted Murphy of resisting an officer. Murphy's conviction and consecutive nine-month sentence for that offense are not relevant to the issues that he raises on appeal.

<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 Pursuant to WIS. STAT. § 939.63(2), Murphy faced a presumptive minimum sentence upon conviction of committing a felony while armed with a dangerous weapon. The statute provided:

[w]hoever is convicted of committing a felony while possessing, using or threatening to use a dangerous weapon shall be sentenced to a minimum term of years in prison, unless the sentencing court otherwise provides. The minimum term for the first application of this subsection is 3 years. The minimum term for any subsequent application of this subsection is 5 years. If the court places the person on probation or imposes a sentence less than the presumptive minimum sentence, it shall place its reasons for so doing on the record.

*Id.* No circuit court had applied § 939.63(2) when sentencing Murphy for prior offenses.<sup>3</sup> Therefore, he faced a presumptive minimum term of three years in prison. *See id.*

¶5 Murphy contends that WIS. STAT. § 939.63(2) required the circuit court to impose at most three years of imprisonment unless the circuit court gave specific reasons for imposing a longer sentence. He is not correct. The law presumed that he would receive at least the presumptive minimum sentence. *Cf. State v. Mohr*, 201 Wis. 2d 693, 701, 549 N.W.2d 497 (Ct. App. 1996) (law presumes that defendant will be sentenced to at least two years in prison under a penalty provision with a two-year presumptive minimum sentence). Only if the circuit court imposed a sentence shorter than the presumptive minimum did

---

<sup>3</sup> The presentence investigation report, which the parties agreed accurately described Murphy's ten prior convictions, reflected that Murphy had no history of sentencing under WIS. STAT. § 939.63(2).

§ 939.63(2) require a separate explanation for the decision. *See id.* (“If the court ... imposes a sentence less than the presumptive minimum sentence, it shall place its reasons for so doing on the record.”).

¶6 Moreover, the circuit court did state its reasons for imposing the maximum sentence. The court explained: “this [crime] was at the extreme end of domestic violence. If it had gone just a little bit further, [Murphy] would be in court for a homicide .... [The crime] requires the maximum sentence .... This was as cruel a beating as one human being can administer on another.”

¶7 Murphy also complains because the circuit court did not expressly state that it was imposing a portion of the sentence pursuant to WIS. STAT. § 939.63(2). Murphy’s complaint does not allege any error. The circuit court has no obligation to state that its sentence includes a component imposed pursuant to a penalty enhancer. Indeed, we have opined that the circuit court should pronounce a sentence “*without* allocating any portions of the confinement imposed among the base offense and enhancers. Such allocation is not required by statute or case law.” *State v. Kleven*, 2005 WI App 66, ¶18 n.4, 280 Wis. 2d 468, 696 N.W.2d 226.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

