

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 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. 2010AP988-CR

Cir. Ct. No. 2005CF4250

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SHAWN JOSEPH MURPHY,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Shawn Joseph Murphy appeals orders of the circuit court reconfining him for the maximum-available two years and four days and denying his motion for a new reconfinement hearing. Murphy contends that

the court erroneously exercised its discretion in setting his reconfinement term. We disagree with Murphy and, therefore, affirm the orders.

¶2 In October 2005, Murphy was sentenced for a conviction on one count of second-degree recklessly endangering safety. He was sentenced to two years' initial confinement and two years' extended supervision, imposed and stayed in favor of four years' probation. Probation was revoked and Murphy served the initial confinement portion of his sentence. He was released to extended supervision on July 2, 2008. In February 2009, he was taken into custody and revocation proceedings commenced.

¶3 A reconfinement hearing was held in August 2009. Counsel recommended six to nine months of reconfinement. The circuit court ordered Murphy reconfined for the maximum two years and four days, as the Department of Corrections and administrative law judge had requested. Murphy moved for a new sentencing hearing, arguing the court had not considered all relevant factors or objectives and that the court failed to adequately explain its reconfinement sentence. The court denied the motion, and Murphy appeals.

¶4 A reconfinement hearing is similar to a sentencing hearing. *State v. Brown*, 2006 WI 131, ¶20, 298 Wis. 2d 37, 725 N.W.2d 262. We thus review the reconfinement decision for an erroneous exercise of discretion. *Id.*, ¶22. As with sentencing, we expect a reconfinement court to identify objectives of greatest importance to the sentence, as well as the factors relevant to those objectives. *Id.*, ¶39 (citing *State v. Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197). Factors relevant to the reconfinement decision include but are not limited to: the seriousness of the original crime; the Department's recommendation; the

defendant's conduct and the nature of his violations; and the defendant's attitude. *See State v. Walker*, 2008 WI 34, ¶17, 308 Wis. 2d 666, 747 N.W.2d 673.

¶5 Murphy contends that the circuit court “failed to provide a reasoned basis for its reconfinement decision.” He makes this claim based on the court's heavy reading of the administrative law judge's opinion, contending the record fails to reveal an “explained judicial reasoning process.” We disagree.

¶6 Murphy was revoked from extended supervision because he failed to comply with electronic monitoring, resided at an inappropriate residence, failed to report to his agent for a period of time, and took and sold two rings without the owner's consent. His attorney argued that six to nine months' reconfinement was appropriate because Murphy had not committed a new crime to prompt revocation. The monitoring violations had occurred because Murphy had been kicked out of his residence, and he ultimately reported to his agent on his own.

¶7 At the reconfinement hearing, the circuit court gave Murphy an opportunity to speak. Murphy began by blaming his agents for a lack of better communication. The court asked Murphy whether he should know better, given that his probation in this case had been previously revoked. When Murphy began debating the point, the court read a portion of the administrative law judge's findings to him.

¶8 Murphy then began to debate further with the circuit court, saying he would just like to “move on” considering he had already been incarcerated on this case. This led the court to read back a portion of Murphy's statement to the original sentencing court, where Murphy apologized for his actions and told the sentencing court that he was “going to move forward.”

¶9 The circuit court went on to explain the listed violations leading to revocation, which Murphy disputed. Listening to Murphy, the court commented that he seemed to have a lot of anger. Murphy explained he was “upset with what I’m going through in my life right now.” The court responded that Murphy simply had to follow the rules. Murphy protested that he had been trying, but that it was “only my second time on paper.” The court rejected this “defense,” explaining that Murphy had a number of offenses going back in time, then reading additional document portions out loud, before adopting the two year and four day recommendation.

¶10 From the context of the total dialogue between Murphy and the circuit court, it is clear that the court adopted the findings of the administrative law judge as the basis of the sentence. Thus, it is clear that the court considered maximum reconfinement necessary to protect the community from Murphy’s ongoing transgressions. It is also clear that the court considered the Department’s recommendation; Murphy’s character, attitude and adjustment to supervision; the seriousness of his original crime; and the nature of the new violations. The court properly exercised its discretion when it sentenced Murphy at the reconfinement hearing, and it properly denied the motion for a new hearing.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

