

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 16, 2003

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.

Appeal No. 03-1627-CR

Cir. Ct. No. 97CT970218

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANTHONY LEE TUCKER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM W. BRASH, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Anthony L. Tucker, *pro se*, appeals from the order denying his motion “for amended terms of commitment.” Tucker contends that the trial court erred in denying his request: (1) to amend his sentence so that it

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

could be served concurrently with a subsequently imposed prison sentence; and (2) to have his commitment for failing to pay fines served concurrently with his subsequently imposed prison sentence. Because the circuit court's decision denying Tucker's motion properly analyzed the issues, this court adopts it. *See* WIS. CT. APP. IOP VI(5)(a) (Sept. 27, 2001). A copy of the decision is attached and incorporated herein. This court, however, also offers a brief factual summary and some additional explanation for the denial of Tucker's requests.

¶2 According to the appellate record, Tucker was charged with operating after revocation, 5th offense, on January 2, 1997. Tucker appeared in court on July 1, 1998, and pled guilty to the offense. The circuit court withheld the entry of judgment, conditioning it on Tucker returning with a valid license, and adjourned the case to September 29, 1998. The circuit court noted, however, that if Tucker did not return with a license, it would impose a sentence of six months in the House of Correction, and a fine of \$2000, including costs, with an alternative of a sixty-day commitment for nonpayment, consecutive to any other sentence.

¶3 On September 29, 1998, Tucker failed to appear, and the circuit court lifted the stay and ordered entry of the judgment. On November 24, 1999, in Brown County case no. 97CF000520, Tucker was sentenced for Possession with Intent to Deliver THC, less than 500 grams, and Possession with Intent to Deliver Cocaine, less than 5 grams. He received 18 months and 6 years respectively, concurrent. Tucker was also charged in Waukesha County case no. 99CF000307. The record for that case, however, is not part of this record, with the exception of

an Amended Judgment of Conviction, dated July 14, 2000, which Tucker attached to his submission to the Milwaukee County Circuit Court.²

¶4 On August 26, 2002, Tucker asked the Milwaukee County Circuit Court to allow him to serve the commitment time concurrent to his prison sentence. The circuit court denied the request, noting that a commitment for nonpayment of a fine and costs may not be served in the prison system, and further, that this commitment was to be consecutive to any jail time ordered. On January 19, 2003, Tucker again wrote the circuit court requesting that both the fine and cost commitments be converted to a suspension of his driver's license. The court denied his request. Finally, on May 23, 2003, Tucker filed his motion seeking an order allowing him to serve the commitments concurrently with the prison sentence he was serving in his Waukesha County case. Again, the court denied his request.

¶5 On appeal Tucker contends that the court erroneously denied his request to amend his sentence. This court disagrees.

¶6 WISCONSIN STAT. § 973.15(2), provides:

(a) Except as provided in par. (b), [regarding intensive sanctions], the court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously.

² As the appellant, Tucker is responsible for perfecting the appellate record. *Fiumefreddo v. McLean*, 174 Wis. 2d 26-27, 496 N.W.2d 226 (Ct. App. 1993) (appellant is responsible for ensuring completion of appellate record, and “when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court’s ruling”).

At the time Tucker's sentence was imposed in the Milwaukee County case, he had not been sentenced in any other matter. According to the information Tucker has provided this court, the Milwaukee sentence had been imposed before Tucker was sentenced in the Brown and Waukesha County cases. Hence, Tucker would need to address his request to those courts to obtain the relief he seeks. As the State explains:

Mr. Tucker argues that the sentence imposed in Milwaukee County cannot be consecutive to any sentence that had not been imposed prior to his being sentenced. He is correct. There is no evidence in this record that that has taken place. The court docket entries and judgment of conviction[] do not demonstrate that the sentence is consecutive to any other. (Only the commitment for fail[ing] to pay [the] fine is consecutive to the time to be served for the underlying offense.)

Whether the Brown County and/or Waukesha County sentences are concurrent or consecutive to the sentence imposed in this case is a question ... to be addressed to those courts and does not properly lie in this appeal.

This court agrees. The sentencing transcript, sentence credit forms and other materials from those cases are not part of this appellate record. Accordingly, this court cannot further address the issues they may involve. In all other respects, this court adopts the circuit court's decision and order denying Tucker's motion for amended terms of commitment.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

