

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 26, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1862-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JANE I. PECKHAM,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Reversed and remanded.*

Before Eich, C.J., Vergeront, J., and Robert D. Sundby, Reserve
Judge.

PER CURIAM. Jane Peckham appeals from an order denying postconviction relief, entered subsequent to her conviction on multiple felony and misdemeanor counts. Peckham received prison sentences totaling twenty years and probation terms totaling thirty-two years, commencing midway through her prison sentences. As a condition of probation the court ordered

that there be "no letters, no calls or communications of any type to any court, division of corrections person, prosecutors or any of the families of those groups of people without the written permission of her probation agent." The issue is whether that condition is an unconstitutional infringement on Peckham's rights. Because we conclude that the condition is overly broad in some respects, we reverse. We remand to allow the court to fashion a condition that attains the same goal without violating Peckham's constitutional rights.

The trial court may impose any conditions of probation which appear to be reasonable and appropriate. Section 973.09(1)(a), STATS. The conditions of probation may restrict constitutional rights, but not in an overly broad manner, nor in any way not reasonably related to the defendant's rehabilitation. *Edwards v. State*, 74 Wis.2d 79, 84-85, 246 N.W.2d 109, 111 (1976). Whether a condition satisfies this constitutional test is a question of law which we decide without deference to the trial court. *State v. Miller*, 175 Wis.2d 204, 208, 499 N.W.2d 215, 216 (Ct. App. 1993).

The trial court's condition of probation is overly broad in two respects. First, it unduly restricts Peckham's right of access to the courts. The trial court stated that its intention was not "in any way to restrict Ms. Peckham's rights to file grievances, to file lawsuits, to pursue any legal remedy she feels that she has." However, read literally, that is precisely what it does by requiring permission from her probation agent to exercise those rights. Second, as the State concedes, the court imposed an impractical restriction on communication with Department of Corrections personnel. Peckham will be in prison while she serves the first part of her probation period. During that time, the condition, read literally, prohibits what will be inevitable and unavoidable daily contact with DOC employees.

The condition of probation is otherwise reasonably related to Peckham's rehabilitation and not overly broad. Peckham has an undisputed record of harassing people involved in prosecuting her or supervising and regulating her behavior during and subsequent to her prosecutions. She has, in fact, been criminally prosecuted and convicted for such behavior. Peckham nevertheless contends that the condition is unreasonable because it does not relate to her current convictions on various theft and forgery charges. However, preventing her from harassing public officials is reasonably related to previous

criminal conduct and to her rehabilitation. That is all that is necessary. *Miller*, 175 Wis.2d at 210, 499 N.W.2d at 217.

On remand, the trial court may refashion the condition so that it is directed solely toward the prevention of harassing behavior. The court may not impose a prior approval requirement, for reasons other than harassment, on her right of access to courts or other legal forums to pursue claims. Nor can the court restrict reasonable and necessary communications with DOC personnel during her incarceration.

By the Court. – Order reversed and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.