



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

January 6, 2014

To:

Hon. Michael Guolee
Circuit Court Judge
Safety Building
821 W. State St.
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Tiffany M. Winter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jose M. Hernandez, Jr. 223465
P.O. Box 903
Sturtevant Transitional Facility
Sturtevant, WI 53177

You are hereby notified that the Court has entered the following opinion and order:

2012AP2790-CR	State of Wisconsin v. Jose M. Hernandez, Jr. (L.C. #2003CF6710)
2012AP2791-CR	State of Wisconsin v. Jose M. Hernandez, Jr. (L.C. #2005CF835)

Before Fine, Kessler and Brennan, JJ.

Jose M. Hernandez, Jr., *pro se*, appeals an order denying his motion for relief from an order amending the term of his reconfinement after revocation of his extended supervision. *See* WIS. STAT. § 806.07(1). He contends the circuit court made a mistake when it amended the reconfinement order. Based upon our review of the briefs, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We summarily affirm.

Hernandez was convicted of operating while under the influence as a seventh offense and sentenced to seven years of imprisonment, with four years of initial confinement and three years of extended supervision, to be served consecutively to any other sentence (case No. 2009CF631). At the time Hernandez committed his seventh offense, he was on extended supervision for operating while intoxicated as a fifth and sixth offense (case Nos. 2003CF6710 and 2005CF835). His extended supervision was revoked in those cases and he was ordered back to prison for three years on each case, to be served concurrently.

After sentencing, the Department of Corrections notified the circuit court that Hernandez should not have been sentenced to three years of reconfinement in case No. 2003CF6710 because he only had two years, one month and seven days available for reconfinement in that case. The circuit court amended its reconfinement order to two years, one month and seven days, to be served concurrently to the sentence in case No. 2005CF835. Hernandez then moved for relief from the order reconfining him for two years, one month and seven days in case No. 2003CF6710, arguing that the circuit court inadvertently modified the sentence to run consecutively to the sentence in case No. 2005CF835, rather than concurrently. The circuit court denied the motion.

Hernandez's claim for relief is premised on a factual mistake. When the circuit court reduced the reconfinement time Hernandez needed to serve in case No. 2003CF6710, it did *not* order that the sentence be served consecutively, rather than concurrently. The sentence in case No. 2003CF6710 remains concurrent to the sentence in case No. 2005CF835. After Hernandez

serves both of those sentences, he will then serve the sentence in case No. 2009CF631, which runs *consecutively* to the sentences for the two prior convictions.

IT IS ORDERED that the order of the circuit court is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals