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DISTRICT II

December 17, 2014

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

2014AP668-CR

State of Wisconsin v. Dennis E. Jones (L.C. # 1993CF597)

Before Brown, C.J., Reilly and Gundrum, JJ.

Dennis E. Jones appeals from an order denying his postconviction motion to amend the judgment of conviction to reflect the imposition of concurrent, rather than consecutive sentences. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ Because both the written judgment and the trial court's oral pronouncement reflect its intent to impose consecutive sentences, we affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In 1995, following a jury trial, Jones was found guilty of armed robbery, felon in possession of a firearm, and possession of a short-barreled shotgun. At sentencing, the court imposed the maximum sentence on each count and ordered that the sentences run consecutive to each other and to those previously imposed in connection with Kenosha County Circuit Court case no. 1993CF878:²

In relation to count one in File 93-CF-597, you are sentenced to the Wisconsin State Prisons for an indeterminate term of not more than 30 years. That shall be consecutive to File 93-CF-878.

On count two, sentenced to the Wisconsin State Prisons for an indeterminate term of not more than eight years. That's consecutive to count one.

On count three, sentenced to the Wisconsin State Prisons for an indeterminate term of not more than eight years, consecutive to count two.

The trial court entered a judgment of conviction reflecting the above three consecutive sentences.

In 2014, Jones filed a motion for "Correction, Amendment, and/or Clarification of the Judgment of Conviction," claiming that the written judgment conflicted with the sentencing court's oral pronouncement and should be amended to:

reflect that Counts 1 and 3 were not made consecutive to one another and, therefore, are concurrent; that Count 2 and Case #93-CF-878 were not made consecutive to one another and, therefore, are concurrent; and that no counts were made consecutive to cases #90-CF-76 and #90-CF-344,³ and therefore, are concurrent (with the exception of Count 2).

² At the time of sentencing in the present case, Jones was already serving sentences previously imposed in connection with case nos. 1990CF76 (seven and one-half years), and 1993CF878 (eleven years, consecutive to 1990CF76).

³ Case no. 1990CF344 is irrelevant to this appeal because Jones was ordered to serve a consecutive probationary term.

The motion asserted that relying on the written judgment, the Department of Corrections (DOC) erroneously calculated his aggregate sentence in this case to be forty-six years, to run consecutive to the sentences previously imposed in connection with case nos. 1990CF76 and 1993CF878. The trial court denied the motion, finding that there was no conflict between the written judgment and the oral sentencing pronouncement: “There is nothing to clarify and there is no error in the sentence as being consecutive and not concurrent.” The trial court confirmed that “the total sentence of 46 years in [the present case] is correct[,]” and “[a]ll counts were made consecutive to file 93-CF-878 and that file was consecutive to 90-CF-76.” Jones appeals.

An unambiguous oral sentencing pronouncement controls over a written judgment of conviction. *State v. Prihoda*, 2000 WI 123, ¶29, 239 Wis. 2d 244, 618 N.W.2d 857. In Jones’s case, there is no conflict between the written judgment and the unambiguous oral pronouncement. The oral pronouncement provides that count one is consecutive to the previously-imposed sentence in 1993CF878. Because 1993CF878 was previously ordered to run consecutive to 1990CF76, it follows that count one must also run consecutive to 1990CF76. The same logic applies to counts two and three.

Jones apparently asks this court to read ambiguity into the court’s oral pronouncement because when imposing its consecutive sentences on the three counts, the court did not recite each previously imposed sentence in a cumulative fashion.⁴ From here, Jones contends that he is

⁴ Jones would apparently require the trial court to, for example, order count three to run consecutive not only to count two, but also to count one, case no. 1993CF878, and case no. 1990CF76. Such a repetitive and cumulative recitation is not necessary to determine the sentencing court’s unambiguous intent. See *State v. Brown*, 150 Wis. 2d 636, 642, 443 N.W.2d 19 (Ct. App. 1989) (the intent of the sentencing judge controls the determination of the terms of a sentence).

entitled to a presumption that a given sentence must be deemed concurrent with any previously-imposed sentence not specifically mentioned by the trial court.⁵ Jones does not cite to and we are not aware of any authority requiring a trial court imposing sentence to relate its pronouncement to every other existing sentence. We decline to adopt Jones's twisted and illogical interpretation of the trial court's straightforward, unambiguous oral pronouncement.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

⁵ Here, Jones relies on the proposition that “where an offender is actually or constructively serving a sentence for one sentence and is then ordered to serve another sentence for a different offense, the second sentence will be deemed to run concurrently with the first sentence *in the absence of a statutory or judicial declaration to the contrary.*” *State v. Oglesby*, 2006 WI App 95, ¶21, 292 Wis. 2d 716, 715 N.W.2d 727 (citation omitted) (emphasis in original). *Oglesby* is not on point. First of all, in Jones's case the written judgment and oral pronouncement do not conflict. Second, unlike *Oglesby*, an examination of the record in Jones's case clearly demonstrates that the trial court intended consecutive sentences.