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DISTRICT II

December 22, 2021

o:

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Circuit Court Judge
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Kristina Secord
Clerk of Circuit Court
Walworth County
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Timothy T. Kay
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1418-CR

State of Wisconsin v. Corey J. Turner (L.C. #1996CF409)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Corey J. Turner appeals from a judgment of conviction and an order denying his postconviction motion. He contends that his sentence after revocation is unlawful. 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 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In May 1997, Turner was convicted of multiple crimes, including endangering safety by use of a dangerous weapon and perjury.² The circuit court sentenced him to ten years in prison on the endangering safety charge with 185 days of credit. It ordered him to serve a consecutive five-year period of probation on the perjury charge.

In June 1997, Turner was convicted of two more crimes: battery by a prisoner and disorderly conduct—both as a repeater.³ The circuit court imposed consecutive sentences of eleven years in prison on the battery charge and three years in prison on the disorderly conduct charge.

In 2009, Turner was released on parole. His parole was revoked in 2010, and he was ordered to serve the remainder of his endangering safety sentence in prison. Eventually, Turner was discharged on September 7, 2013, and began his five-year period of probation on the perjury charge.

Between March and July 2018, Turner committed a number of probation violations, including physically assaulting a woman and absconding from supervision. His probation was revoked, and he received a consecutive sentence of three years in prison on the perjury charge.

Turner filed a postconviction motion challenging his sentence after revocation. In it, he claimed that his endangering safety sentence ended in 2006, which meant that his consecutive five-year period of probation on the perjury charge ended in 2011—seven years before any of the

² These convictions arose from Walworth County case No. 1996CF409.

³ These convictions arose from Walworth County case No. 1997CF72.

violations that resulted in his revocation. After a hearing on the matter, the circuit court denied Turner's motion. This appeal follows.

On appeal, Turner renews his challenge to his sentence after revocation. Again, he insists that the sentence is unlawful because his probation expired prior to his probation violations. We are not persuaded.

The problem with Turner's argument is that it is based on the assumption that he immediately served his entire endangering safety sentence. That assumption is incorrect, as Turner's consecutive prison sentences were aggregated as one continuous sentence under WIS. STAT. § 302.11(3).⁴ This meant that he was to serve the confinement portion of his sentences followed by the parole portion. The case of *Ashford v. Division of Hearings and Appeals*, 177 Wis. 2d 34, 501 N.W.2d 824 (Ct. App. 1993) illustrates this.

In *Ashford*, the defendant was sentenced to prison on a robbery charge. *Id.* at 38. He was released on parole, but violated it by committing retail theft. *Id.* His parole was revoked and he received a consecutive sentence for the retail theft. *Id.* Back in prison, the defendant did not serve the remainder of his robbery sentence followed by his entire retail theft sentence.⁵ Rather, his sentences were aggregated as one continuous sentence, and he served the confinement portion of both sentences followed by the parole portion. *See id.*

⁴ WISCONSIN STAT. § 302.11(3) provides that "All consecutive sentences imposed for crimes committed before December 31, 1999, shall be computed as one continuous sentence."

⁵ If a defendant served one entire indeterminate sentence followed by another, then "a parolee serving consecutive sentences on several crimes could be incarcerated and released multiple times before his sentence was finally discharged." *Ashford v. Division of Hearings and Appeals*, 177 Wis. 2d 34, 44, 501 N.W.2d 824 (Ct. App. 1993). We rejected this proposed interpretation of WIS. STAT. § 302.11 as unreasonable. *See id.*

Turner served his sentences in the same manner. Per the calculations of a department of corrections official, whom the circuit court found credible, Turner had nearly three years remaining on his endangering safety sentence when he was released on parole in 2009. He served that time after his parole was revoked in 2010. Thus, he was not discharged until September 7, 2013, and did not begin his five-year period of probation until then. Because his subsequent probation violations occurred during that five-year period, we are satisfied that his sentence after revocation is lawful.⁶

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁶ To the extent we have not addressed an argument raised by Turner on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

