



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 IV

June 24, 2013

To:

Hon. Richard O. Wright
Circuit Court Judge
Marquette County Courthouse
P.O. Box 187
Montello, WI 53949

Melissa M. Zamzow
Clerk of Circuit Court
Waushara County Courthouse
PO Box 507, 209 S. Saint Marie St.
Wautoma, WI 54982

Scott Chester Blader
District Attorney
P. O. Box 490
Wautoma, WI 54982-0490

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Ricky Leeroy Maldonado 465452
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

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

2011AP2964-CR

State of Wisconsin v. Ricky Leeroy Maldonado
(L.C. # 2003CF57)

Before Higginbotham, Sherman and Blanchard, JJ.

Ricky Maldonado appeals an order denying his “motion for amended judgment of conviction.” 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 We reverse and remand with directions to amend the judgment.

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

Maldonado's motion sought to delete provisions in the judgment of conviction requiring him to pay costs and fees from his prison accounts, up to 25% of gross. The circuit court denied the motion as untimely, but did not cite any specific law setting a time limit, and did not otherwise address the substance of the motion.

The State argues that Maldonado's motion was not timely because it was a motion to modify his sentence, and thus subject to several familiar time limits set by statute and rule. We do not agree that Maldonado's motion was one to modify the sentence imposed. Rather, it was a motion to conform the judgment of conviction to the sentence that Maldonado argues was imposed. The State has not presented any law setting a time limit within which such a motion must be made. Therefore, we do not conclude that the motion was untimely.

Turning to the substance of the motion, Maldonado argues that the judgment's provisions on costs and fees are not consistent with the court's oral pronouncement at sentencing. There, the court said: "Court would also require that the costs of the action that I have identified previously be paid as a condition of extended supervision if they have not been paid by the time of his release."

We conclude that although the oral pronouncement is ambiguous, it is most reasonable to infer from the above statement that the court intended Maldonado to pay costs and fees from his prison accounts while in prison. However, we see no basis to infer intent for the 25% part of the judgment. The State asserts that the court intended to add that provision, but the State cannot point to anything in the record that supports that assertion. There is nothing in the oral pronouncement of sentence, and the judgment was not signed by the judge, and so cannot be simply assumed to accurately reflect the court's intent.

Therefore, we reverse the order denying the motion to amend the judgment and remand with directions to issue an amended judgment that removes the 25% clause from the judgment's provisions on payment of costs and fees.

IT IS ORDERED that the order appealed is summarily reversed under WIS. STAT. RULE 809.21 and the cause is remanded with directions.

Diane M. Fremgen
Clerk of Court of Appeals