

SUPREME COURT OF WISCONSIN

State v. Brown

2006 WI 131 (Wis. 2006) · No. 2005AP584-CR · Decided December 19, 2006

SUMMARY

The Wisconsin Supreme Court reviewed a reconfinement order imposing three years in prison on John C. Brown after revocation of his extended supervision. The court held that the circuit court did not erroneously exercise its discretion and was not required to defer to the Department of Corrections' recommendation, although the recommendation should be considered. The court provided guidance on factors relevant to reconfinement decisions and affirmed the court of appeals.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	N. Patrick Crooks, J.
JURISDICTION	Wisconsin
DECIDED	December 19, 2006
DOCKET	2005AP584-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Review of a published court of appeals decision affirming a Milwaukee County Circuit Court order reconfining Brown to prison for three years following revocation of extended supervision and affirming denial of Brown's motion for reconsideration.
STANDARD OF REVIEW	A reconfinement decision is reviewed under the erroneous-exercise-of-discretion standard applicable to sentencing decisions. Interpretation of statutes and administrative rules is reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Wisconsin Supreme Court opinion
PARTIES	John C. Brown v. State of Wisconsin

TOPICS

- sentencing
- sentence modification
- criminal procedure
- standard of review
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate law

QUESTIONS PRESENTED

1. Whether the circuit court erroneously exercised its discretion by ordering three years of reconfinement after revocation of extended supervision.
2. Whether a circuit court must give deference to the Department of Corrections' reconfinement recommendation.
3. What factors a circuit court should consider and explain on the record when making a reconfinement decision.
4. Whether the circuit court adequately explained the basis for the three-year reconfinement period.

HOLDINGS

1. A circuit court must consider the DOC's reconfinement recommendation, but the recommendation is not entitled to deference and the court is not required to follow it.
2. A reconfinement decision, like an initial sentencing decision, is reviewed to determine whether the circuit court erroneously exercised its discretion.
3. In exercising discretion at a reconfinement hearing, a circuit court should consider the DOC recommendation, the original offense, institutional conduct, the conduct and nature of the extended-supervision violation, public-protection needs, the defendant's prior record, attitude, capacity for rehabilitation, and rehabilitative goals in relation to the time remaining on the original sentence. The court should explain on the record the relevant factors supporting its decision, but the factors are guidance rather than a mandatory checklist.
4. The circuit court did not erroneously exercise its discretion and adequately explained its decision to impose three years of reconfinement.

KEY QUOTATIONS

“A circuit court should consider the recommendation from the DOC. The court should also consider the nature and severity of the original offense, the defendant's institutional conduct record, and the defendant's conduct and the nature of the violation of terms and conditions during extended supervision, as well as the amount of incarceration necessary to protect the public from the risk of further criminal activity.” (at 265-266)

“The court should impose the minimum amount of confinement which is consistent with the protection of the public, the gravity of the offense, and the defendant's rehabilitative needs.” (at 266)

“We do not intend to set forth a required checklist that must be followed in every instance. Nevertheless, a circuit court, in demonstrating an exercise of discretion in a reconfinement decision, should consider many of the factors discussed herein, when making reconfinement decisions, and should explain on the record those factors which are relevant to the circumstances of a particular case.” (at 273-274)

FACTUAL BACKGROUND

Brown was originally charged in connection with a planned armed robbery but pleaded guilty to reduced felony-theft charges. He received an eight-year bifurcated sentence and was released to extended supervision in May

2003. Three months later, police found him possessing two cocaine rocks, the Department of Corrections revoked his extended supervision, and the DOC recommended one year, ten months, and thirty days of reconfinement. The circuit court instead ordered three years, citing Brown's cocaine problem, the seriousness of the violation, and the risk he posed to the community.

PROCEDURAL HISTORY

Brown pleaded guilty to felony theft after the State reduced an armed-robbery-related charge pursuant to a negotiated plea agreement. He received an eight-year bifurcated sentence, was released to extended supervision, and was later revoked after being found in possession of cocaine. The circuit court ordered three years of reconfinement and denied reconsideration; the court of appeals affirmed, and the Wisconsin Supreme Court granted Brown's petition for review and affirmed.

DISPOSITION

affirmed

CASES CITED

- McCleary v. State, 49 Wis. 2d 263, 182 N.W.2d 512 (1971)
- Hillhaven Corp. v. DHFS, 232 Wis. 2d 400, 409, 606 N.W.2d 572 (Ct. App. 1999)
- State v. Taylor, 2006 WI 22, 289 Wis. 2d 34, 710 N.W.2d 466
- State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197
- State v. Swiams, 2004 WI App 217, 277 Wis. 2d 400, 690 N.W.2d 452
- State v. Odom, 2006 WI App 145, 720 N.W.2d 695
- State v. Wegner, 2000 WI App 231, 239 Wis. 2d 96, 619 N.W.2d 289
- State v. Brown, 2006 WI App 44, 289 Wis. 2d 691, 712 N.W.2d 899
- State v. Jones, 2005 WI App 259, 288 Wis. 2d 475, 707 N.W.2d 876
- State v. Spears, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999)
- State v. Johnson, 158 Wis. 2d 458, 469, 463 N.W.2d 352 (Ct. App. 1990)
- State ex rel. Hauser v. Carballo, 82 Wis. 2d 51, 261 N.W.2d 133 (1978)
- Morrissey v. Brewer, 408 U.S. 471, 480, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)
- State v. Greve, 2004 WI 69, 272 Wis. 2d 444, 681 N.W.2d 479
- Bruneau v. State, 77 Wis. 2d 166, 175, 252 N.W.2d 347 (1977)
- State v. Taylor, 2006 WI 22, ¶ 43, 289 Wis. 2d 34, 710 N.W.2d 466
- Cunningham v. State, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977)