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**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](http://www.wicourts.gov)

**DISTRICT II**

December 23, 2015

To:

Hon. Mary Kay Wagner  
Circuit Court Judge  
Kenosha County Courthouse  
912 56th Street  
Kenosha, WI 53140

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
912 56th Street  
Kenosha, WI 53140

Russell D. Bohach  
P. O. Box 485  
Butler, WI 53007

Marguerite M. Moeller  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Robert D. Zapf  
District Attorney  
Molinaro Bldg  
912 56th Street  
Kenosha, WI 53140-3747

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

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2015AP281-CR

State of Wisconsin v. Alexander J. Rose (L.C. #2012CF642)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Alexander J. Rose appeals from a judgment convicting him of multiple counts of first-degree sexual assault of a child. He contends that the circuit court erred when it determined that he was subject to the mandatory minimum term of confinement in effect when he committed his crimes. 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 (2013-14).<sup>1</sup> We affirm the judgment of the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In 2013, Rose was convicted following a jury trial of two counts of first-degree sexual assault of a child. The charges stemmed from allegations that Rose had sexual intercourse with a child under the age of twelve in 2007, when Rose was under the age of eighteen.<sup>2</sup>

When Rose committed his two assaults, they were subject to a mandatory minimum term of confinement of twenty-five years. *See* WIS. STAT. § 939.616(1) (2005-06). Effective March 27, 2008, however, the statute was amended, and the mandatory minimum no longer applied to offenders who were under eighteen when they committed their crimes. *See* 2007 Wis. Act 80, § 8.

Given this change in the law, a question before the circuit court was whether Rose was still subject to the mandatory minimum term of confinement in effect when he committed his assaults. The court concluded that he was and sentenced him to two concurrent sentences, each consisting of twenty-five years of initial confinement followed by six years and three months of extended supervision. This appeal follows.

On appeal, Rose challenges the circuit court's determination that he was subject to the mandatory minimum term of confinement in effect when he committed his two assaults. Whether the court correctly applied the relevant statutes to the facts of this case is a question of law subject to de novo review. *Betthausser v. Medical Protective Co.*, 172 Wis. 2d 141, 146, 493 N.W.2d 40 (Ct. App. 1992).

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<sup>2</sup> Rose was convicted of an additional count of sexual assault for sexual contact he had with a child under the age of thirteen. He does not challenge that conviction on appeal, as it does not involve the application of a mandatory minimum term of confinement.

WISCONSIN STAT. § 990.04 governs the effect of repealed statutes on pending actions. Essentially, it provides that criminal prosecutions shall proceed to judgment in the same manner as if the repealed statute continued in full force.<sup>3</sup> Although § 990.04 refers to repealed statutes, it applies with equal force to an amended statute because such a statute is “in its legal effect a repeal of those restrictive words.” *Truesdale v. State*, 60 Wis. 2d 481, 487, 210 N.W.2d 726 (1973) (quoting *Thom v. Sensenbrenner*, 211 Wis. 208, 211, 247 N.W. 870 (1933)).

Notwithstanding WIS. STAT. § 990.04, Rose asserts that the amended law should have governed his sentencing because it is procedural rather than substantive in nature. This court rejected a similar argument in *State v. Hermann*, 164 Wis. 2d 269, 474 N.W.2d 906 (Ct. App. 1991). There, a defendant maintained that a change to the mandatory minimum prison term for a drug offense was procedural and should therefore apply retroactively. *See id.* at 275, 287. We

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<sup>3</sup> WISCONSIN STAT. § 990.04 provides:

The repeal of a statute hereafter shall not remit, defeat or impair any civil or criminal liability for offenses committed, penalties or forfeitures incurred or rights of action accrued under such statute before the repeal thereof, whether or not in course of prosecution or action at the time of such repeal; but all such offenses, penalties, forfeitures and rights of action created by or founded on such statute, liability wherefore shall have been incurred before the time of such repeal thereof, shall be preserved and remain in force notwithstanding such repeal, unless specially and expressly remitted, abrogated or done away with by the repealing statute. And criminal prosecutions and actions at law or in equity founded upon such repealed statute, whether instituted before or after the repeal thereof, shall not be defeated or impaired by such repeal but shall, notwithstanding such repeal, proceed to judgment in the same manner and to the like purpose and effect as if the repealed statute continued in full force to the time of final judgment thereon, unless the offenses, penalties, forfeitures or rights of action on which such prosecutions or actions shall be founded shall be specially and expressly remitted, abrogated or done away with by such repealing statute.

disagreed and reiterated that “[§] 990.04 controls the question of which penalty provisions apply when there is an interim legislative change in the penalty scheme.” *Id.* at 287-88.

Applying WIS. STAT. § 990.04 and *Hermann* to the case at hand, we conclude that Rose was subject to the mandatory minimum term of confinement in effect when he committed his two assaults. Accordingly, we affirm the judgment of the circuit court.

Upon the foregoing reasons,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*