



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

May 21, 2019

To:

Hon. Craig R. Day
Circuit Court Judge
130 W. Maple St., Br. 2
Lancaster, WI 53813

Lisa A. Riniker
District Attorney
130 W. Maple St.
Lancaster, WI 53813

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
130 W. Maple St.
Lancaster, WI 53813

Scott E. Rosenow
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

John D. Tiggs Jr. 150033
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2018AP1006-CR

State of Wisconsin v. John D. Tiggs, Jr., a/k/a A'Kinbo Jihad-Suru Hashim, Jr. (L.C. # 2002CF162)

Before Lundsten, P.J., Blanchard and Kloppenburg, 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).

John Tiggs, also known as A'Kinbo J.S. Hashim, appeals an order clarifying his reconfinement sentence as well as an order denying reconsideration of that order. 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 (2017-18).¹ We summarily affirm.

Tiggs was convicted of felony battery by a prisoner in 2003, and was sentenced to two years of initial confinement and three years of extended supervision, consecutive to any other sentence. Tiggs' extended supervision was later revoked and, at a reconfinement hearing held on April 15, 2010, the Grant County Circuit Court ordered twelve months of reconfinement, consecutive to a prison sentence Tiggs was then serving in Milwaukee County. The day after the reconfinement hearing, the circuit court entered an Order for Reconfinement after Revocation of Extended Supervision. The order stated: "This sentence is to run consecutive to the Prison sentence the Defendant is now serving on the Milwaukee County Case." The order also stated that Tiggs was entitled to 140 days of sentence credit. Several months later, the court issued an amended order that changed the language of the sentence credit portion of the order, stating that Tiggs was "entitled to credit for all time spent in custody as set forth in the Revocation Order and Warrant dated 3/17/09." The amended order contains no language referencing the consecutive or concurrent nature of the reconfinement sentence.

Tiggs appealed, and we affirmed his reconfinement sentence in a no-merit opinion issued on July 29, 2011. The opinion specifically acknowledges the consecutive nature of the reconfinement sentence. Tiggs had argued in his response to the no-merit report that the circuit court did not exercise discretion when it ordered that the reconfinement sentence be consecutive to any sentence he was serving. We concluded that his argument lacked arguable merit, stating:

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

“The record shows, however, that the circuit court exercised discretion when it considered whether the sentence should run consecutively”

In April 2018, Tiggs filed a motion requesting that the Grant County Circuit Court clarify his reconfinement sentence. Tiggs argued that the amended reconfinement order had the effect of modifying his reconfinement sentence so that it ran concurrent to his Milwaukee County sentence. Tiggs argued that, therefore, the sentence credit he received in his Milwaukee County case also should be applied against his Grant County reconfinement sentence, thus satisfying his reconfinement sentence in its entirety. The circuit court rejected Tiggs’ argument in an order entered on April 17, 2018. Tiggs filed a motion for reconsideration, and the circuit court denied the motion.

Tiggs now appeals the circuit court’s April 17, 2018 order and the order denying reconsideration. He argues that, when the circuit court issued its amended reconfinement order, which is silent as to whether the two sentences at issue are concurrent or consecutive, the court converted his sentences to being concurrent. Tiggs then asserts that, when the circuit court later entered its April 17, 2018 order clarifying that the sentence was consecutive, the order had the effect of increasing his sentence, in violation of his right against double jeopardy under the Fifth Amendment to the United States Constitution and article I, section 8 of the Wisconsin Constitution.

The State counters that there is no double jeopardy concern because, contrary to Tiggs’ belief, the amended reconfinement order did not increase his sentence. The State argues that the circuit court’s amended reconfinement order, at most, was rendered ambiguous by its silence on whether the sentences at issue were consecutive or concurrent. The State asserts that, because

the court clearly and unambiguously stated at the reconfinement hearing that Tiggs' reconfinement sentence was to run consecutive to his Milwaukee County sentence, that oral pronouncement trumps the possibly ambiguous written order. We agree with the State's position.

Here, the record shows that the circuit court clearly and unambiguously stated at several points during Tiggs' reconfinement hearing that his sentence would be consecutive in nature. At the beginning of the hearing, the court stated: "Because the original sentence is consecutive, the reconfinement will be consecutive." Later in the hearing, the court told Tiggs: "[W]hatever I do by way of a reconfinement decision will be consecutive to your sentence you are presently serving in Milwaukee County" Shortly thereafter, when pronouncing Tiggs' sentence, the court stated that "[t]hat period of reconfinement is consecutive to his currently served sentence out of Milwaukee County." The court's oral pronouncement of consecutive sentences is clear and unambiguous in the record and, therefore, it is controlling. See *State v. Prihoda*, 2000 WI 123, ¶15, 239 Wis. 2d 244, 618 N.W.2d 857 ("[T]he law is clear in Wisconsin that the record of the circuit court's unambiguous oral pronouncement of sentence trumps the written judgment of conviction.").

The circuit court properly determined that Tiggs was not entitled to have the sentence credit that was already applied in his Milwaukee County case applied to his Grant County reconfinement sentence as well. See *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) (credit "is not to be duplicatively credited to more than one of the sentences imposed to run consecutively").

IT IS ORDERED that the orders are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals