COURT OF APPEALS
DECISION
DATED AND FILED

May 4, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1443 **Cir. Ct. No. 2005CV54**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. JOHN W. SWEENEY, SR.,

PETITIONER-APPELLANT,

V.

CATHERINE FARREY,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Juneau County: JOHN P. ROEMER, Judge. *Affirmed.*

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. John Sweeney appeals an order quashing his writ of habeas corpus. We affirm for the reasons discussed below.

¶2 In 1995, Sweeney was sentenced to a combined ten years in prison on two counts of third-degree sexual assault. He was paroled upon reaching his mandatory release date in January of 2002, and was placed on electronic monitoring as a condition of his parole. Sweeney's parole was revoked in September of 2003, and he was reincarcerated. It appears from correspondence sent to this court that Sweeney is now once again on parole.

¶3 In the present appeal, Sweeney contends that his placement on electronic monitoring while on parole essentially constituted continued confinement and punishment, thereby violating the double jeopardy and ex post facto clauses, and denying him his rights to due process, good time and mandatory release, and protected liberty interests. He further claims he should have received sentence credit on his reconfinement for the time he spent on electronic monitoring, and that he should be allowed to withdraw his plea because he was not informed about the possibility of electronic monitoring before entering it.

¶4 While Sweeney cites a multitude of cases and other authorities, none of them support his claims. In a nutshell, an electronic monitoring condition for parole does not constitute either confinement or punishment. Rather, it is a reasonable requirement of supervision, particularly for sex offenders. *See* ***State ex rel. Macemon v. McReynolds***, 208 Wis. 2d 594, 598-99, 561 N.W.2d 779 (Ct. App. 1997). Therefore, none of the statutory or constitutional provisions Sweeney discusses are applicable. The conditions of his parole did not violate the double jeopardy or ex post facto clauses and did not deprive him of his good time or mandatory release because he was in fact released from prison. He was not denied due process or a liberty interest by the decision of the Department of Corrections to place him on electronic monitoring without a hearing because there is no requirement that such a hearing be given. Sweeney was not entitled to sentence

credit for time spent on electronic monitoring because he was not held in custody in an institution or situation to which an escape charge would apply. ***State v. Magnuson***, 2000 WI 19, ¶25, 233 Wis. 2d 40, 606 N.W.2d 536. Finally, because the decision to place Sweeney on electronic monitoring was made by an administrative agency rather than the court, it constituted a collateral rather than a direct consequence of his plea. ***State v. Byrge***, 2000 WI 101, ¶66, 237 Wis. 2d 197, 614 N.W.2d 477. Therefore, Sweeney's failure to realize that he might be placed on electronic monitoring provides no basis for plea withdrawal.

¶5 We do not address Sweeney's arguments in further detail because we agree with the State that most of them are procedurally barred. In particular, the proper mechanism for Sweeney to challenge the conditions of his parole would have been through certiorari rather than habeas review. *See* ***Macemon***, 208 Wis. 2d at 599.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.