COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP3185 **Cir. Ct. No. 1994CF81**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARCUS E. STURDEVANT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed*.

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

¶1 PER CURIAM. Marcus Sturdevant appeals from an order denying his motion for reconsideration of an order denying his motion to withdraw his plea or obtain other relief. We affirm.

¶2 Sturdevant pled no contest in 1994 to three counts of first-degree sexual assault of a child. In June 2006, he moved to withdraw his pleas on the ground that he had not been informed that one consequence of the pleas was that he would be ordered to pay a $50 annual sex offender registration fee. In the alternative, he asked the court to order that he not have to pay the fee. Although Sturdevant did not cite the statute, this is essentially a postconviction motion under WIS. STAT. § 974.06 (2005-06).[1] The circuit court denied this motion by order of July 7, 2006. We have previously determined that we lack jurisdiction to review that order because Sturdevant's appeal was not timely as to that order.

¶3 As discussed in our order dated April 16, 2007, Sturdevant's appeal was timely from the circuit court's December 15, 2006, order denying his reconsideration motion. Therefore, we may have jurisdiction to review that order, but the question remains whether there are any issues that we may address. As we previously stated, an appeal cannot be taken from denial of reconsideration unless the motion for reconsideration presented issues other than those that were determined in the order sought to be reconsidered. ***Silverton Enters., Inc. v. General Cas. Co. of Wisconsin***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). We ordered the parties to address this issue in their appellate briefs.

¶4 The State argues that no issues exist for us to review. It acknowledges that Sturdevant's reconsideration motion added some new arguments, but the State asserts that simply adding different reasons to achieve the same goals is not sufficient. We disagree. The new-issues test is to be liberally

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

applied, and it is sufficient if the motion raises a new argument, even though it relates to the ground that the trial court relied on in making its decision. *See* ***Harris v. Reivitz***, 142 Wis. 2d 82, 88-89, 417 N.W.2d 50 (Ct. App. 1987). Therefore, we will review the denial of Sturdevant's reconsideration motion, to the extent that the motion made arguments not previously addressed by the circuit court, and to the extent Sturdevant continues to make those arguments on appeal.

¶5 In his original motion, Sturdevant asked the circuit court to prevent the Department of Corrections from taking any money from him for any reason other than those specified in the judgment of conviction, "in the interests of justice, judicial economy and fair play." It appears the purpose of that order would have been to prevent collection of the $50 annual sex offender registration fee, which was not stated in the judgment. In his reconsideration motion, Sturdevant expanded on his reasons for seeking an order blocking the fee. For the first time, he argued that the imposition of this fee was a substantial change in punishment that violates constitutional ex post facto principles. Sturdevant continues to make this argument on appeal.

¶6 In response, the State argues that this question has already been resolved against Sturdevant in ***Smith v. Doe***, 538 U.S. 84 (2003), where the Court held that a similar registration program in Alaska was constitutional because the legislature did not intend the program as punishment. The State argues that the Wisconsin Supreme Court has determined that the intent of the registration program in Wisconsin is not punishment. ***State v. Bollig***, 2000 WI 6, ¶¶21-27, 232 Wis. 2d 561, 605 N.W.2d 199. We agree with the State's reading of these cases, and Sturdevant does not dispute this argument. Therefore, we conclude that the registration fee is not in violation of ex post facto principles.

¶7 In his brief on appeal, Sturdevant also argues that his plea agreement did not include the registration fee, and he has a right to have that agreement enforced, and also that the fee is a new factor that permits modification of his sentence. As far as we can tell, neither of these arguments was raised first in circuit court. We usually do not address issues that are raised for the first time on appeal, ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), and we see no reason to do so in this case.

By the Court.—Order affirmed.

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