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DISTRICT III

June 2, 2026

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

Donald V. Latorraca
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Travis J. Husnik
Electronic Notice

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

2024AP2073-CR State of Wisconsin v. Travis J. Husnik (L. C. No. 2008CF526)

Before Stark, P.J., Hruz, and Gill, 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).

Travis Husnik appeals from a circuit court order denying his motion to reconsider a previously entered order that denied his motion to retroactively void a revoked term of probation. 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 (2023-24).¹ We affirm.

On April 13, 2010, the circuit court imposed and stayed a sentence of ten years' initial confinement followed by ten years' extended supervision on a felony drug count, subject to an

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

eight-year term of probation, without any mention of conditional jail time. In the same proceeding, the court sentenced Husnik to four years' initial confinement followed by four years' extended supervision on a second felony drug count, consecutive to a Kewaunee County sentence Husnik was already serving. Because the judgment of conviction was silent as to whether the term of probation on the first count was consecutive or concurrent to the Kewaunee County sentence, this court determined it to be concurrent by operation of law.

While Husnik was serving the extended supervision portion of the second count, his term of probation on the first count was extended by two years. On July 30, 2018, Husnik's probation on the first count and his extended supervision on the second count were both revoked, and Husnik began serving the initial confinement portion of the stayed sentence on the first count.²

On February 7, 2024, Husnik filed a motion seeking to retroactively "dismiss" or declare void, under WIS. STAT. § 973.09(2m), what he alleged to have been an excessive term of probation on the first count. The motion was based on the premise that, because Husnik was already in confinement on the Kewaunee County case when he began serving his probation on the first count in this case, his confinement constituted a de facto condition of his probation, and the term of his probation therefore could not exceed one year under § 973.09(1) and could not include nonworking hours under *State v. Gloudemans*, 73 Wis. 2d 514, 243 N.W.2d 220 (1976).

The circuit court denied the motion in a letter order filed on April 8, 2024. The court explained that WIS. STAT. § 973.09(1) has no application here because Husnik was not in

² The parties have not informed us, and it is not immediately apparent from the record, whether Husnik also began serving reconfinement time on the second count after the revocation of his extended supervision.

confinement as a condition of his probation when he began serving that term of probation, but rather his confinement was a result of his sentence in the Kewaunee County case. The court further observed that making the term of probation in this case concurrent to the sentence in another case was authorized by § 973.09(1)(a).

Husnik did not directly appeal the April 8, 2024 order. Husnik instead filed a motion for reconsideration that: (1) challenged the circuit court’s assertion that WIS. STAT. § 973.09(1)(a) authorizes a term of probation to be imposed concurrent to the sentence in another case; and (2) reasserted Husnik’s claim that the judgment in this case by necessity “required” Husnik to be confined during probation because Husnik was already serving a term of confinement in another case when the probation was imposed. The court denied the motion for reconsideration on July 15, 2024, and Husnik filed a notice of intent to seek relief from the reconsideration order on August 2, 2024, followed by a notice of appeal on October 10, 2024, and an amended notice of appeal with a corrected electronic signature on December 2, 2024.

As a threshold matter, the State asserts that this court lacks jurisdiction over the appeal under *Silverton Enterprises, Inc. v. General Casualty Co. of Wisconsin*, 143 Wis.2d 661, 665-66, 422 N.W.2d 154 (Ct. App. 1988), because Husnik’s reconsideration motion did not raise a new issue.³ The purpose of the *Silverton* rule is to prevent a litigant from evading a nonextendable deadline to appeal in a civil case. *Id.*; WIS. STAT. RULE 809.82(2)(b). This appeal, however, arises from a postconviction motion in a criminal case, seeking relief pursuant to WIS. STAT. §973.09(2m). The time to appeal the circuit court’s order was therefore governed

³ Husnik disputes that assertion, claiming that he did raise at least one new issue in the reconsideration motion.

by WIS. STAT. RULE 809.30. *See* RULE 809.30(1)(b)1., (c). The State has not cited, and we are unaware of, any authority applying the *Silverton* rule to an appeal under RULE 809.30, where this court would have the power to extend the deadline to appeal. To the extent that an extension would be necessary here to preserve Husnik's right to appeal, we conclude that awaiting a decision on reconsideration constitutes good cause for such an extension. We therefore assume jurisdiction over this appeal.

Husnik's first claim on appeal is that the circuit court exceeded its authority under WIS. STAT. § 973.09(4)(a) by requiring him to be confined without work privileges and during nonworking hours as a condition of his probation. There is no factual basis for this claim. Neither the transcript of the sentencing hearing nor the judgment of conviction stated that Husnik's probation was conditioned upon serving any jail time. The fact that Husnik was being confined in prison as the result of his sentences in the Kewaunee County case and the second count in this case at the same time that he was serving his probation on the first count of this case does not mean that his confinement was a condition of the probation. Husnik plainly would have remained confined in prison without work privileges during that period even if the court had not imposed any term of probation upon him.

Husnik's second claim on appeal is that the circuit court lacked authority under WIS. STAT. § 973.09(1)(a) to make his probation concurrent to his sentences in the Kewaunee County case and the second count in this case. We disagree. The statute provides that a term of probation "may" be imposed consecutive to a sentence. *Id.* It logically follows that a court is not required to make a term of probation consecutive, which can only mean that it may be concurrent. This construction of the statute is consistent with this court's ruling in a prior appeal that the term of probation imposed on the first count in this case was concurrent to the sentence

in the Kewaunee County case and the second count in this case by operation of law because the court did not explicitly make it consecutive.

Husnik's third claim on appeal is that WIS. STAT. § 973.09(4)(a) limited the length of his probation to one year because he was fully confined during the first year of his probation. Therefore, he argues, the remaining seven years of his probation should have been void pursuant to § 973.09(2m), his probation should have been completed before it was revoked, and he should not now be serving the previously stayed sentence on the first count. We have already explained that § 973.09(4)(a) does not apply here, however, because the circuit court did not impose any jail time as a condition of the probation. We further note that § 973.09(4)(a) provides a limitation on the *length of confinement* that can be imposed as a condition of probation, not on the *length of the term of probation*, which is determined by § 973.09(2).

Upon the foregoing,

IT IS ORDERED that the postconviction order denying reconsideration is summarily affirmed. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals