

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0902-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES HEGNA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
ROBERT H. RASMUSSEN, Judge. *Affirmed.*

HOOVER, J. Charles Hegna appeals a judgment of conviction for obstructing an officer, contrary to § 946.41, STATS. Hegna contends the trial court denied his right to allocution at sentencing, in violation of § 972.14(2), STATS., and his constitutional due process rights. This court disagrees and therefore affirms.

On July 15, 1996, Hegna pled guilty to obstructing an officer and operating a motor vehicle while under the influence of an intoxicant, third offense, in violation of § 346.63(1)(a), STATS. Before sentencing, the court inquired: “Anything you want to tell me before I proceed with sentencing on the obstructing charge, Mr. Hegna?” Hegna responded, “No, sir.” The court then withheld sentence and placed Hegna on two years' probation for the obstruction conviction. One of the probation conditions was that he not consume alcohol. When asked by the court, Hegna responded that he understood the terms of his probation. On the OWI charge, the court imposed and stayed a one-year sentence in the county jail and a \$1,184 fine, pending successful completion of his probation.

In January 1997, Hegna's probation was revoked for consuming alcohol. Hegna appeared at sentencing for obstructing a police officer the following month. The State recommended nine months' jail time. Hegna testified at the sentencing hearing. His attorney questioned him as to what led him to consume alcohol on January 18, 1997. After questioning him, defense counsel asked Hegna, “Is there anything you would like to say to the court?” Hegna then addressed the court. Later, counsel asked him, “Anything else you want to say to the court?” and Hegna again made a statement to the court. The court sentenced Hegna to nine months' jail without Huber privileges.

Due process and § 972.14(2), STATS., both afford a person convicted of a crime the right to allocution. Section 972.14(2) reads in part:

Before pronouncing sentence, the court shall ask the defendant why sentence should not be pronounced upon him or her and allow the district attorney, defense counsel and defendant an opportunity to make a statement with respect to any matter relevant to the sentence.

Hegna contends the court erred by proceeding to sentencing without allowing him an opportunity to speak following the defense attorney's sentencing statement. He attempted to make a statement, but the court responded, "Listen, sir, it is my turn to talk."

This case involves the application of law to undisputed facts. It therefore presents a question of law reviewed de novo. *Ball v. District No. 4, Area Bd.*, 117 Wis.2d 529, 537, 345 N.W.2d 389, 394 (1984). Section 972.14, STATS., the codification of the common law right to allocution, provides that a defendant shall be asked whether he or she wishes to make a statement before being sentenced. *State v. Varnell*, 153 Wis.2d 334, 338, 450 N.W.2d 524, 526 (Ct. App. 1989).

This court rejects Hegna's argument on both statutory and constitutional grounds. During the first sentencing hearing in July 1996, the court asked Hegna directly if he wanted to speak and he responded that he did not. During sentencing following his probation revocation, Hegna was provided with ample opportunity to address the court. He testified at the hearing. His counsel asked him twice if he had anything to say to the court and Hegna addressed the court both times. A review of his responses demonstrates that Hegna attempted to explain his behavior to the court. As such, those statements directly address the purpose of allowing a defendant to speak—to attempt to influence the court on the issue of sentencing. Further, Hegna's defense attorney summed up his testimony and argued on his behalf. In summary, Hegna was not denied his right to allocution, but was given liberal opportunity to address the court.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

