

**COURT OF APPEALS
DECISION
DATED AND FILED**

DECEMBER 23, 1997

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. 97-1602-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MARIONTAI STACY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
JOHN D. MCKAY, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Mariontai Stacy, an inmate in the Wisconsin prison system, appeals his conviction for battery to a prisoner as a party to the crime, having entered an *Alford* no contest plea to the charge. At the prison, Stacy received disciplinary sanctions for the same conduct consisting of eight days adjustment segregation and 360 days program segregation; prison officials also

later transferred him to a different institution. Stacy claims that the criminal charge, on top of the prison sanctions, constitutes unconstitutional double jeopardy. While conceding that his double jeopardy argument contradicts current case law, *see, e.g., State v. Killebrew*, 115 Wis.2d 243, 340 N.W.2d 470 (1983), he claims that his prison transfer distinguishes his case and inherently converted his prison sanctions from remedial matters into punishment. He reasons that prison officials no longer had grounds to base the sanctions on the need to maintain order once they transferred him to a different institution, away from the scene of the incident. We reject this argument and affirm his conviction.

Stacy's argument misunderstands the purpose of prison sanctions and misreads them from a prison-centered perspective rather than a prisoner-centered one. Prison sanctions are primarily remedial, not punitive. *See id.* at 254, 340 N.W.2d at 476. They serve to control the prisoner's comportment through behavior and attitude adjustment. They concern the prisoner, not the prison itself. They retain those characteristics despite the prisoner's change of institution. We have no reason to believe that Stacy's transfer lessened his need for attitude and behavior control. Further, prisoners are sentenced to the Wisconsin State prison system, not a particular institution. *See* §§ 973.013 and 973.02, STATS. The executive branch has the power to control the placement of prisoners and to move them from one prison to another for purposes of sound prison administration, such as controlling problematic inmates. This suggests that Stacy's transfer from one institution to another has no legal significance in terms of punishment. No matter where enforced, Stacy's prison sanctions remain primarily remedial, and we see nothing in the transfer sufficient to invoke double jeopardy protections.

By the Court.—Judgment affirmed.

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

