COURT OF APPEALS
DECISION
DATED AND FILED

July 28, 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. 97-3267-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHERRY M. KLITZKA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed.*

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

PER CURIAM. Sherry Klitzka appeals a trial court order that refused to terminate her probation and release her from jail. Klitzka pleaded no contest to one count of felony welfare fraud. The trial court stayed a five-year prison sentence and imposed a seven-year probation term with several conditions, including $1,249 in restitution, GED completion, a seek-work order, and a one-

year county jail term. The trial court also indicated that Klitzka would be "released on probation" if she paid her restitution. Klitzka paid the restitution. She then moved the trial court to discharge her from probation and release her from jail. She argued that the trial court had promised at sentencing to discharge her from probation and to end her jail term as soon as she paid restitution. The trial court rejected this argument, and Klitzka makes the same argument on appeal. We must read the trial court's sentence to fulfill the court's clear intention. *See* ***Krueger v. State***, 86 Wis.2d 435, 443, 272 N.W.2d 847, 850 (1979). Viewed in their totality, the trial court's sentencing remarks reveal a clear intention not to end Klitzka's probation and one-year jail term if she paid restitution. We therefore affirm the postjudgment order refusing to change Klitzka's probation.

At sentencing, the trial court first spoke of the need for a one-year jail term, rather than intensive sanctions. The trial court indicated Klitzka's crime, as a second offense, deserved some period of incarceration. The trial court then stated that it wanted Klitzka to pay restitution and that it knew this would take her a long time. The trial court next stated that it would "have no objection to [Klitzka] being *released on probation* if she could pay the restitution up. That's the main purpose of the *seven years*" (emphasis added). These remarks reveal the trial court's intention. By first emphasizing the need for a one-year jail term and then tying the remarks "released on probation" to the remarks "seven years," the trial court was stating an intention to shorten the probation's seven-year length if Klitzka paid restitution. The trial court linked only one element of Klitzka's probation to her payment of restitution, the element of length. The trial court never mentioned the GED condition, the seek-work condition, the one-year jail term, or the probation's discharge itself. This shows that the trial court had no intention of discharging or changing these matters. Further, the trial court twice

confirmed this intention at two postjudgment hearings. In short, the trial court never intended to end Klitzka's jail term and probation the day she paid restitution.

Last, Klitzka states that the trial court should have discharged her from the one-year jail term regardless of its original intention. She believes that the trial court should have changed this for cause, for the reasons that she paid the restitution and completed her GED. The trial court has continuing jurisdiction to modify the terms of probation for cause. *See* ***State ex rel. Taylor v. Linse***, 161 Wis.2d 719, 722, 469 N.W.2d 201, 202 (Ct. App. 1991). The trial court, however, needed to keep the original goals of the probation in mind. Among those were Klitzka's rehabilitation and the public interest. *See* ***State v. Brown***, 174 Wis.2d 550, 554, 497 N.W.2d 463, 464 (Ct. App. 1993). Here, the trial court had a reasonable basis to insist that Klitzka adhere to the original terms of her probation. Klitzka had committed a serious crime, and the trial court designed the terms of her probation to serve rehabilitative purposes. The trial court concluded that Kltizka's and the public's best interests would be better served by continuing Klitzka's probation as originally issued. The trial court evidently believed that the one-year jail term remained a proper punishment and continued to have rehabilitative benefits. We have no basis to overrule this decision. If Klitzka wants to shorten her probation, she should file an appropriate trial court motion.

By the Court.—Order affirmed.

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