

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 16, 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. 98-0774-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DEBRA L. VAN RIPER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County:
STEVEN L. ABBOTT, Judge. *Affirmed.*

DYKMAN, P.J.¹ Debra Van Riper appeals from an amended judgment of conviction for one count of misdemeanor theft. She contends that the trial court improperly amended the judgment of conviction and ordered her to pay extradition costs after she had been sentenced. We conclude that the amended

¹ This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

judgment of conviction was consistent with the trial court's unambiguous oral pronouncement at sentencing. We therefore affirm.

BACKGROUND

The facts are not in dispute. Debra Van Riper drove an acquaintance's car, without permission, from Sparta, Wisconsin to Los Angeles, California. She was charged with one count of operating a motor vehicle without the owner's consent, contrary to § 943.20(1)(a), STATS. Pursuant to a plea bargain, Van Riper entered an *Alford* plea to one count of misdemeanor theft.

The trial court accepted her guilty plea and sentenced her to two years of probation. At sentencing, the trial court stated that, "[a]s a condition of probation, [Van Riper] will have to pay the extradition costs of Monroe County Sheriff's Department[,] which has been set forth in the record. She will also have to pay restitution to the victim."

Extradition costs were not expressly included in the original judgment of conviction.² The original judgment of conviction stated that Van Riper was to pay the following: (1) twenty dollars in court costs, as an obligation of probation, and (2) costs and restitution, as a condition of probation. At a restitution hearing, Judge Abbott ordered the clerk to amend the judgment of conviction to include extradition costs.

² The clerk added a comment to the original judgment of conviction which reads, "restitution and DARS to be determined and paid to probation."

DISCUSSION

Van Riper argues that the trial court imposed costs under § 973.06(1), STATS.,³ after sentencing. Van Riper is incorrect. The trial court specifically sentenced Van Riper, “[a]s a condition of probation[,] ... to pay the extradition costs of Monroe County Sheriff’s Department” These extradition expenses, however, were not included in the original judgment of conviction. They were added when the judgment of conviction was amended after sentencing.

Van Riper contends that this amendment violates her statutory rights.⁴ We disagree. The trial court made an unambiguous oral pronouncement when it ordered Van Riper to pay these expenses. The clerk simply neglected to include them in the original judgment of conviction. When an oral pronouncement is unambiguous, and the corresponding written judgment of conviction conflicts with the oral pronouncement, it is the oral pronouncement that controls. *State v. Perry*, 136 Wis.2d 92, 114, 401 N.W.2d 748, 758 (1987). Therefore, the trial court’s unambiguous verbal order governs the issue of the extradition expenses.

³ Section 973.06(1), STATS., provides, in relevant part:

[T]he costs taxable against the defendant shall consist of the following items and no others:

(a) the necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

⁴ Van Riper does not specifically state which statute is being violated. She asserts based on *State v. Perry*, 215 Wis.2d 690, 573 N.W.2d 876 (Ct. App. 1997), which is discussed later in this decision, that the trial court is not allowed to impose costs under 973.06, STATS., after sentencing.

A trial court has the power to amend a judgment of conviction to correct a clerical error. *Krueger v. State*, 86 Wis.2d 435, 439, 272 N.W.2d 847, 849 (1979). A clerical error was made in the original judgment of conviction. Therefore, the trial court could amend the judgment of conviction to correct the clerical error to conform to the unambiguous oral pronouncement.

Van Riper argues that our holding in *State v. Perry*, 215 Wis.2d 690, 573 N.W.2d 876 (Ct. App. 1997), governs this case. In *Perry*, the defendant was convicted of forging checks. *Perry*, 215 Wis.2d at 697, 573 N.W.2d at 878. At sentencing, the court ordered the defendant to pay statutory costs and restitution, but not extradition expenses. *Id.* at 705, 573 N.W.2d at 878. After sentencing, the trial court amended the judgment of conviction to include extradition expenses. *Id.* We held that a court could not impose these expenses under § 973.06, STATS, after sentencing. *Id.* at 708, 573 N.W.2d at 883.

The facts of *Perry* can be distinguished from the facts in this case. In *Perry*, the extradition costs were imposed by the court *after sentencing*. In this case, the trial court verbally ordered Van Riper to pay extradition costs as a condition of her probation *at sentencing*; it merely amended the judgment of conviction after sentencing to conform to the verbal order. We therefore conclude that the unambiguous oral pronouncement and the amended judgment of conviction, which both require Van Riper to pay the extradition costs, are controlling. Accordingly, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4, STATS.

