

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 10, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2005AP713-CR
2005AP714-CR
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2003CF36
2003CF54**

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL L. NELSON,

DEFENDANT-APPELLANT.

APPEALS from a judgment and an order of the circuit court for Oconto County: LARRY L. JESKE, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Daniel Nelson appeals a judgment resentencing him for two counts of bail jumping after the court granted his initial postconviction motion for resentencing. He also appeals an order denying the

present motion for resentencing. Because we conclude the court failed to articulate the facts upon which it based the sentences, we reverse the judgment and order and remand the matter for resentencing.

¶2 Nelson was convicted on *Alford*¹ pleas to two counts of bail jumping based on allegations of unlawful contact and physical violence against Sara Schwendeman. At the sentencing hearing, Schwendeman expressed her fear of Nelson because he had been violent to her and her child, threatened her with a knife and killed a pet. She stated that a previous girlfriend, Angie Arnoldi, was also victimized by Nelson and had to get a restraining order against him. Nelson denied any physical violence. The court sentenced him to consecutive terms totaling four years' initial confinement and eight years' extended supervision, noting that Nelson had no respect for laws and no respect for women. As a condition of extended supervision, the court ordered Nelson to pay Schwendeman's medical expenses and ordered domestic abuse counseling "because what I have seen and heard, this is a classic situation of domestic abuse."

¶3 The court granted Nelson's motion for resentencing because the sentence exceeded the allowable term of extended supervision. At the resentencing hearing, Nelson presented evidence that contradicted Schwendeman's allegations of physical abuse. Arnoldi testified that Nelson had never been physically abusive to her or her daughter and she never obtained a restraining order against him. She testified that she never told Schwendeman Nelson had abused her, and that Schwendeman had made false statements to her about the paternity of Arnoldi's baby. The defense also pointed out that

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

Schwendeman's allegations were made during a child custody dispute, and Schwendeman had also reported that Nelson abused their son, an allegation determined to be unsubstantiated.

¶4 The court then sentenced Nelson to consecutive terms totaling four years' initial confinement and six years' extended supervision. It again noted Nelson's disregard for the conditions of his bond, but refused to resolve the discrepancies between Schwendeman's and Arnoldi's testimony. Nor did the court state its rationale for the new sentence. The terms of the extended supervision remained unchanged.

¶5 A sentencing court is required to "by referencing to the relevant facts and factors, explain how the sentence's component parts promote the sentencing objectives." *State v. Gallion*, 2004 WI 42, ¶46, 270 Wis. 2d 535, 678 N.W.2d 197. Because the court did not resolve the disputed evidence or explain how resolution was unnecessary to promote sentencing objectives, we cannot uphold the sentences. The trial court's findings are not sufficient for this court to determine whether it properly exercised its discretion.

¶6 The State argues that a lengthy sentencing rationale was not required because the court was simply modifying Nelson's sentence to comport with the law and the court's comments at the original sentencing hearing described its rationale for the resentencing as well. However, the nature of the error necessitating the resentence does not bear on the scope of the information a resentencing the court should consider when a resentencing is required for any reason. The initial sentence ceases to exist. Thus, the sentencing court's obligations are the same regardless of whether it is an initial sentence or resentencing. *State v. Carter*, 208 Wis. 2d 142, 157, 150 N.W.2d 256 (1997). On

resentencing, the court must consider the information presented as it would for an initial sentence. *Id.* Basing the sentence and the terms of extended supervision on allegations of violence requires a factual basis for the alleged violence. Here, the court failed to state clearly its rationale at resentencing.

By the Court.—Judgment and order reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

