

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 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 No. 2004AP3392-CR

Cir. Ct. No. 1998CF1180

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PHILLIP M. HUDSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Phillip M. Hudson appeals from a judgment convicting him of armed robbery, contrary to WIS. STAT. § 943.32(1)(b) and (2)

(1997-98)¹ and an order denying his motion for sentence modification. Because the circuit court did not violate Hudson's double jeopardy rights when it imposed a ten-year sentence for the offense after Hudson's probation was revoked, we affirm.

¶2 In January 2002 Hudson was convicted of armed robbery following the entry of his guilty plea. The circuit court withheld sentence and placed Hudson on five years of probation with the condition that he serve a one-year term in the House of Correction.

¶3 Hudson's probation was revoked in September 2002, and he returned to the circuit court for sentencing. The circuit court imposed a ten-year sentence with credit for time served. Hudson subsequently moved the circuit court for sentence modification, arguing that his double jeopardy rights were violated when the circuit court punished him twice for the same offense. The circuit court denied the motion and Hudson appeals.

¶4 Whether Hudson's double jeopardy rights were violated by the circuit court presents a question of law we review *de novo*. *State v. Jones*, 2002 WI App 208, ¶8, 257 Wis. 2d 163, 169, 650 N.W.2d 844, *review denied*, 2003 WI 126, 265 Wis. 2d 416, 668 N.W.2d 557. The case law is settled that revocation is not considered punishment within the meaning of double jeopardy. *State v. Schreiber*, 2002 WI App 75, ¶14, 251 Wis. 2d 690, 642 N.W.2d 621. As this court explained in *State v. Verstoppen*, 185 Wis. 2d 728, 736-37, 519 N.W.2d 653 (Ct. App. 1994), the imposition of a sentence after revocation is not the imposition

¹ Because Hudson committed the burglary in 1998, the 1997-98 statutes apply. Therefore, all references are the 1997-98 version unless otherwise noted.

of a new punishment but rather is a continuing consequence flowing from the original conviction.

¶5 Double jeopardy is not implicated by the circuit court's imposition of a sentence greater than the original probationary period. When a defendant's sentence is withheld and the defendant's probation is later revoked, the circuit court has authority to impose any sentence permitted under the statute applicable at the time of conviction. *Id.* at 736-38. Accordingly, we reject Hudson's claim that the circuit court violated his double jeopardy rights when it imposed a ten-year sentence after Hudson's probation was revoked.

¶6 Finally, Hudson contends that the circuit court is bound by federal sentencing guidelines issued in 1984. Hudson relies on *United States v. Sanchez-Estrada*, 62 F.3d 981 (7th Cir. 1995). The case addresses the application of federal sentencing guidelines to a prosecution of federal offenses. Hudson's reliance is inapposite to our circuit court's application of state sentencing statutes predicated on Hudson's conviction of a state statute prohibiting armed robbery. Accordingly, we decline to follow Hudson's second line of reasoning.

By the Court.—Judgment and order affirmed.

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

