

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 2007

David R. Schanker
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. 2006AP1994-CR

Cir. Ct. No. 2004CF2053

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEPHEN MARCELL HANKINS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
TIMOTHY G. DUGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Steven M. Hankins appeals from a reconfinement order entered after the revocation of extended supervision and from a postconviction order denying a motion for sentence modification. On appeal, Hankins argues that the reconfinement court erroneously exercised its discretion

when it ordered that Hankins be reconfined for two years and three days, the maximum allowable period. Because the reconfinement court properly exercised its discretion, we affirm.

Background

¶2 In 2004, Hankins pled guilty to one count of fleeing an officer and one count of misdemeanor retail theft. *See* WIS. STAT. §§ 346.04(3), 346.17(3)(a) and 943.50 (2003-04). The court sentenced Hankins to three years and six months for the fleeing count, comprised of eighteen months of initial confinement and twenty-four months of extended supervision. The court imposed a ninety-day concurrent sentence for the retail theft count. The Hon. Karen E. Christensen sentenced Hankins.

¶3 Hankins was released to extended supervision on October 11, 2005. He was arrested on November 26, 2005 after battering his girlfriend. The Department of Corrections (DOC) sought to revoke Hankins's extended supervision, and he waived his right to a revocation hearing. Hankins's extended supervision was revoked on January 12, 2006, and a reconfinement hearing before the Hon. Timothy G. Dugan was held on February 23, 2006. The DOC recommended reconfinement for seven months and six days, and the State recommended reconfinement for the remainder of the sentence. The court agreed with the State's recommendation, and ordered that Hankins be reconfined for the rest of his sentence—two years and three days.

¶4 Hankins filed a timely notice of intent to pursue postconviction relief from the reconfinement order. *See State v. Swiams*, 2004 WI App 217, ¶¶4, 23, 277 Wis. 2d 400, 690 N.W.2d 452 (a person whose extended supervision has been revoked may seek relief under WIS. STAT. RULE 809.30 (2005-06) from the

reconfinement order). Hankins filed a postconviction motion in which he argued that the court erroneously exercised its discretion in its reconfinement order. The court denied the motion, and Hankins now appeals.

Discussion

¶5 A reconfinement hearing after revocation is akin to a sentencing hearing. *State v. Brown*, 2006 WI 131, ¶20, 298 Wis. 2d 37, 725 N.W.2d 262. A reconfinement decision “involves the circuit court’s discretion, and [on appeal] we review the circuit court’s decision to determine whether that discretion was erroneously exercised.” *Id.*, ¶22. An erroneous exercise of discretion occurs “whenever it appears that no discretion was exercised in its imposition [of the sentence] or discretion was exercised without the underpinnings of an explained judicial reasoning process.” *Id.* (quoting *McCleary v. State*, 49 Wis. 2d 263, 278, 182 N.W.2d 512 (1971)).

In making reconfinement decisions, we expect that circuit courts will usually consider the nature and severity of the original offense, the [defendant’s] institutional conduct record, as well as the amount of incarceration necessary to protect the public from the risk of further criminal activity, taking into account the defendant’s conduct and the nature of the violation of terms and conditions during extended supervision. The reconfinement period imposed should be the minimum amount that is necessary to protect the public, to prevent the depreciation of the seriousness of the offense, and to meet the defendant’s rehabilitative needs.

Id., ¶34 (citations omitted).

¶6 If the reconfinement court considered the relevant factors, and not irrelevant or improper ones, and the decision was within the statutory limits, the sentence will be upheld on appeal unless it is “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate

the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.*, ¶22 (quoting *State v. Taylor*, 2006 WI 22, ¶18, 289 Wis. 2d 34, 710 N.W.2d 466).

¶7 Hankins contends that the court did not adequately explain why reconfinement for the entire remaining sentence was appropriate. He concedes that the court’s reasoning would support some reconfinement time. But Hankins contends, however, the circuit court “jumped to the conclusion, without explanation,” that reconfinement for the entire remaining sentence was warranted. More particularly, Hankins contends that the court did not explain why the reconfinement sentence was needed to protect the community or to meet his rehabilitative goals. Hankins further contends that the court erroneously exercised its discretion by not explaining whether it considered the DOC recommendation.

¶8 We reject Hankins’s contentions. The record of the reconfinement hearing shows that the court had reviewed the transcript of the original sentencing. *See Brown*, 298 Wis. 2d 37, ¶¶21, 38 (when the reconfinement court did not impose the original sentence, it should review the transcript of the original sentencing). The court identified the three primary sentencing factors—the nature of the offense, the character of the defendant, and the interests of society. The court further noted that society’s interests included punishment, deterrence, rehabilitation and protection. The court stated that the underlying crime was a “serious offense” and noted that the original sentencing court, after considering those sentencing factors, had concluded that the maximum sentence was justified.

¶9 The court considered Hankins’s conduct while on extended supervision. The court noted that Hankins was on extended supervision “a little over a month” when he “committed the new crime, the battery.” The court further

noted that Hankins was “confrontational” with his supervising agent at a transitional living program. The court also considered that Hankins had taken “some positive steps” while on extended supervision by beginning alcohol and drug abuse treatment and applying for the “Wiser Choice” program.¹ The court noted, however, that Hankins also committed the new crime which showed that Hankins was “not ready to be supervised in the community; that [he has] rehabilitative needs that have to be addressed in a structured, confined setting; and that there is a need to protect the community” from his conduct.

¶10 The court gave a reasoned explanation for its reconfinement decision. *See id.*, ¶29. The court identified the various factors that it considered in its reconfinement order. The court concluded that the maximum length of reconfinement was “consistent with the protection of the public, the gravity of the offense and the defendant’s rehabilitative needs.” *See id.*, ¶34. The court properly exercised discretion.²

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

¹ The record indicates that the “Wiser Choice” program offers alcohol and drug abuse treatment, mental health evaluation, housing and employment programs.

² Several of the court’s comments referred to facts and background set forth in the DOC recommendation. Therefore, it is evident that the court considered the DOC recommendation. *See State v. Brown*, 2006 WI 131, ¶25, 298 Wis. 2d 37, 725 N.W.2d 262 (a reconfinement court should consider the DOC recommendation, but the court is not required to follow the recommendation).

