

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2001

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. 01-0973-CR
STATE OF WISCONSIN**

Cir. Ct. No. 97-CM-234

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FRED J. ODELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
PATRICK J. FIEDLER, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ Fred J. Odell appeals an order of the circuit court denying his postconviction motion. For the following reasons, we affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶2 On November 27, 2000, while incarcerated at the Fox Lake Correctional Institution, Odell filed a motion for sentence credit. A hearing was conducted on that motion on February 2, 2001.

¶3 As the circuit court clarified at the hearing, Odell was not actually seeking sentence credit under WIS. STAT. § 973.155. Instead, Odell essentially argued that the thirty-three days he is to spend incarcerated for failure to pay a court-ordered fine, issued in conjunction with a period of incarceration, constituted a sentence that was already served concurrently with the sentence he is now serving in a separate case. Thus, he should be relieved from serving the thirty-three days after he is released from incarceration.

¶4 As the circuit court pointed out at the hearing, Odell's argument is based on an incorrect premise. Odell believes that the thirty-three days he was ordered to spend incarcerated for failure to pay the court-ordered fine constitutes a sentence. In fact, "a commitment for failure to pay a fine is not an alternative sentence of incarceration in lieu of the original fine nor is it another punishment for the crime for which the fine was imposed." *State v. Way*, 113 Wis. 2d 82, 85-86, 334 N.W.2d 918 (Ct. App. 1983). Instead, it is a means to enforce payment of a fine and, potentially, a sanction for an inexcusable failure to pay. *Id.* at 86.

¶5 Pursuant to WIS. STAT. § 973.07, if a fine is not paid as required by the sentence, the defendant may be committed to the county jail for a period fixed by the court not to exceed six months. A court may impose such a commitment consecutive to another term of incarceration because, if the court had no authority to do so, the power to order commitment for nonpayment of a fine would be meaningless. *Way*, 113 Wis. 2d at 87. As the *Way* court so adeptly stated:

The obvious purpose of a sentence providing an alternative penalty of six months in jail if the original fine is not paid is to prompt or coerce the defendant to pay the fine. This being the intended purpose, a court by necessity must have the authority to impose a commitment consecutive to the jail time provision. *A commitment must be separate from and in addition to any other periods of incarceration the person is required to serve in order to enable the commitment to serve its prompting or coercive purpose.* If commitments were not separate and consecutive to sentences, then the fine would cease to be a real penalty, since any sanction for nonpayment of the fine would be encompassed within the provision for jail time or imprisonment.

Id. (emphasis added).

¶6 We conclude that the circuit court properly denied Odell's motion. Accordingly, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

