

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 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.

No. 01-1192-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GILBERTO FLORES,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
CARL ASHLEY, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Gilberto Flores, *pro se*, appeals from an order dated April 13, 2001,² denying his post-conviction motion for sentence

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

² In his notice of appeal, Flores claims to appeal from an order dated April 15, 2001. There is no such order. This court therefore interprets the order appealed from to be that of April 13, 2001.

credit for one month and twenty-six days of earned good time credit pursuant to WIS. STAT. §§ 973.155(4) and 302.43 (1999-2000).³ Flores contends that the trial court erred in applying WIS. STAT. § 302.11(6). Because the trial court did not err in its application of § 302.11(6), this court affirms.

I. BACKGROUND

¶2 On February 3, 1999, after pleading guilty to theft (movable property) in case number 98CM012841, Flores was sentenced to five months in jail. The sentence was imposed consecutive to any other sentence. At the time the sentence was imposed, Flores was in custody at the House of Correction pending parole revocation in two felony convictions, F-893604 and F-900031. On May 20, 1999, parole was revoked and Flores was transferred to a state prison.

¶3 On October 3, 2000, Flores claimed that he completed the five-month sentence pursuant to WIS. STAT. § 302.43, less good time credits. Flores was released on parole on October 20, 2000. On February 9, 2001, however, his parole was revoked in all three cases and he was returned to prison to serve the remainder of his sentence. On April 12, 2001, Flores moved for sentencing credit of one month and twenty-six days. The trial court denied the motion on April 13, 2001. Flores now appeals.

³ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

II. ANALYSIS

¶4 Flores contends that the trial court misapplied WIS. STAT. §§ 973.03(2) and 302.11. For procedural and substantive reasons, this court is not convinced.

¶5 From a procedural perspective, Flores either claims the Department of Corrections erred in its calculation of his revocation time or that he is being illegally imprisoned. If his claim is based upon the former error, the proper procedure is an administrative remedy before the department and then, if necessary, the filing of a writ of certiorari.

¶6 On the other hand, if his claim is based upon illegal detention, the route for a writ of habeas corpus ought to be followed. Even if the court were to liberally construe his motion as a WIS. STAT. § 974.06 motion, it would still fail because his claim is neither jurisdictional nor constitutional. Thus, for procedural reasons, Flores's claim fails.

¶7 For substantive reasons, his claim also fails. In this regard, the disposition of this appeal is controlled by a reasonable reading of four unambiguous statutes. In construing a statute, we give effect to the intent of the legislature. *State ex rel. Jacobus v. State*, 208 Wis. 2d 39, 47-48, 559 N.W.2d 900 (1997). We accomplish this task by first looking to the language of the statute itself and giving the language its ordinary and accepted meaning. *State ex rel. Angela M.W. v. Kruzicki*, 209 Wis. 2d 112, 121, 561 N.W.2d 729 (1997). Only if the statutory language is ambiguous, may we resort to outside sources to aid in statutory construction. *Marshall-Wisconsin Co., Inc. v. Juneau Square Corp.*, 139 Wis. 2d 112, 133, 406 N.W.2d 764 (1987).

¶8 First, WIS. STAT. § 973.03(2) declares: “A defendant sentenced to the Wisconsin state prisons and to a county jail or house of correction for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.”

¶9 Given a reasonable reading as applicable to the facts of this case, the statute required that when Flores’s parole was revoked because of the theft conviction, he was required to serve the five-month sentence in the state prison system because of the two previously imposed felony convictions.

¶10 Second, WIS. STAT. § 302.43, in part, reads: “Every inmate of a county jail is eligible to earn good time in the amount of one-fourth of his or her term for good behavior if sentenced to at least 4 days” It is undisputed that after Flores’s parole for two felony convictions was revoked in May 1999, he was not an “inmate of a county jail.” He was an inmate in a state prison. Thus, he was ineligible for good time as provided under § 302.43.

¶11 Third, WIS. STAT. § 302.11 regulates mandatory release on parole and revocation of parole of inmates in the Wisconsin state prisons. Section 302.11(3) states: “All consecutive sentences shall be computed as one continuous sentence.” This statutory language is clear and unambiguous in its meaning. As applicable to Flores, when he was paroled on October 20, 2000, he was paroled on a continuous sentence—the sentence imposed in case 98CM012841 being a constituent, but last, part of the total sentence.

¶12 Fourth, WIS. STAT. § 302.11(7)(a), provides that:

The division of hearings and appeals ... may return a parolee released under sub. (1) ... to prison for a period up to the remainder of the sentence for a violation of the

conditions of parole. The remainder of the sentence is the entire sentence, less time served in custody prior to parole.

¶13 In *Ashford v. Division of Hearings and Appeals*, 177 Wis. 2d 34, 42, 501 N.W.2d 824 (Ct. App. 1983), we construed WIS. STAT. § 302.11(7)(a) to mean that “[i]f consecutive sentences are computed as one continuous sentence, the remainder of the sentence referred to in sec. 302.11(7)(a) must be the remainder of the aggregate sentence[]” less any time spent in custody prior to parole. *Ashford*, 177 Wis. 2d at 42.

¶14 This court agrees with the reasoning set forth in the State’s brief. When Flores violated his conditions of parole a second time and his parole was again revoked, “he did not lose one month and twenty-six days of good time.” That period was simply the remainder of the aggregate sentence attributed to case 98CM012841. Therefore, this court concludes that the trial court did not commit error by applying WIS. STAT. § 973.03(2) to deny good time credit under the circumstances presented in this case, nor did the trial court err in concluding the length of the term for reincarceration.

By the Court.—Order affirmed.

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

