

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 9, 2009**

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. 2009AP935-CR**

**Cir. Ct. No. 2007CM3062**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL A. WOODFORD,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Waukesha County:  
LINDA M. VAN DE WATER, Judge. *Reversed.*

¶1 ANDERSON, J.<sup>1</sup> Michael A. Woodford appeals from an order extending his probation for one year merely to insure continued restitution

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

payments of \$200 per month. We reverse, since the record supports the conclusion that Woodford has met the rehabilitative goals established by the court as conditions of probation and extending probation serves no purpose other than “debt collection.”

¶2 The State and Woodford entered into a plea agreement that culminated in his entering a no contest plea to a count of misdemeanor battery in violation of WIS. STAT. § 940.19(1). Tracking the plea agreement, the circuit court imposed and stayed a nine-month sentence to the county jail; it ordered Woodford to serve one year on probation. As conditions of probation, the court required (1) no contact with the victim, (2) anger management counseling, (3) full time employment, (4) restitution plus other costs totaling \$38,728.34, and (5) the possibility that restitution ordered could be converted into a civil judgment.

¶3 Approximately nine months after sentencing, Woodford’s probation agent filed a request for a probation review hearing. The attached memo to the court reflected that Woodford had paid \$1400 in restitution. The agent informed the court:

Current Status: Mr. Woodford is currently employed at Berghammer Const. Corp. ... as a laborer. He completed anger management with Cedar Creek Family Counseling on 4-16-08.

He has cooperated with supervision. He has been paying \$200.00 per month in court obligations. Mr. Woodford’s probation is scheduled to discharge on 01-31-2009. He owes a balance of \$37,244.33 in court obligations.

Recommendation: Mr. Woodford does not wish to waive his right to a hearing on whether his probation should be extended. He wishes to be heard at a Court Review. It is

recommended that a court review be scheduled to address unpaid court obligations.<sup>2</sup>

¶4 At the court review hearing, Woodford's counsel reminded the court that restitution was set by stipulation and everyone knew that Woodford could not pay the entire amount during a year of probation. Counsel told the court that Woodford had provided the probation agent with all the requested financial documentation and had been paying \$200 per month. Counsel argued that there has to be a reason to extend probation other than for the collection of restitution. He also informed the court that Woodford was in the building trades and would probably be laid off around Christmas. Finally, he stated that Woodford had been paying restitution in good faith to the best of his ability.

¶5 The assistant district attorney responded:

Your Honor, it's the State's position that probation be extended. It's a good tool to ensure that he continues to pay on the amounts the victim's requesting. And he's shown an ability to pay.... But the State is of the position that probation should be extended to continue the payments to not force the victim to have to collect on it and further victimize the victim in this situation.

¶6 The victim appeared at the court review hearing by counsel. Counsel stated, "[A]n extension is the, in our view I guess, is continuing the status quo is the best way to ensure that those payments continue coming in."

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<sup>2</sup> On the bottom margin of the probation agent's memo is an undated and unknown handwriting:

OK to extend probation for additional year—amend JOC for prob. to now discharge January 31, 2010.

We will not speculate as to the source of the handwritten material or the date it was appended to the memo. We do note that if it was appended prior to the requested court hearing date, it would reflect that the author had made up his or her mind before any hearing.

¶7 The circuit court held:

All right. Well, it's rather routine and standard practice to review restitution when it's high and probation. And I am going to extend his probation for an additional year so it will now discharge January 31st, 2010.

¶8 Woodford's counsel objected, "Your Honor, does the Court wish to address the fact that this Court knew and acknowledged that he would not be able to pay restitution within a year? This sounds like an indefinite probationary period." The court responded, "File a motion, counsel. This is standard practice when probation is routinely extended, so file a motion." Woodford's counsel made one last comment, "Your Honor, but the Court—the case law suggests that it can't be done routinely." "File a motion," was the court's final comeback. Woodford appeals.

¶9 The sole issue on appeal is whether the circuit court erroneously exercised its discretion by extending Woodford's probation for one year.

A sentencing court's decision to extend probation is discretionary, but the extension must be warranted under a case's circumstances. A sentencing court exercises the appropriate discretion when it examines the relevant facts, applies a proper standard of law, uses a "demonstrative rational process," and reaches a conclusion that a reasonable judge could reach.

*State v. Olson*, 222 Wis. 2d 283, 292-293, 588 N.W.2d 256 (Ct. App. 1998) (citations omitted).

¶10 We cannot say that the circuit court appropriately exercised its discretion. The court did not mention one fact about the underlying crime, the victim's injuries or Woodford's progress on probation. Stating that "it's rather routine and standard practice" to extend probation is not the application of an appropriate standard of law. A thirty-seven word ruling does not demonstrate a

rational decision-making process. And, extending probation by rote is not a decision a reasonable judge would reach.

¶11 The circuit court failed to take into consideration well-known law on the extension of probation. In *Olson*, this court reviewed the law<sup>3</sup> on extending probation to continue the collection of restitution as established in *Huggett v. State*, 83 Wis. 2d 790, 266 N.W. 2d 403 (1978), and reaffirmed in *State v. Davis*, 127 Wis. 2d 486, 381 N.W. 2d 333 (1986). *Olson*, 222 Wis. 2d at 293-96. We reasoned from these decisions that our supreme court

concluded that the sentencing court had erroneously exercised its discretion by extending probation for the sole purpose of debt collection when the record was “teeming” with *substantial reasons not to extend probation to compel payment of restitution.*

*Id.* at 295.

¶12 We then commented:

The dual goals of probation are rehabilitation of those convicted of a crime and community interests. Probation is the deprivation of a liberty and can require the probationer to follow rules and regulations directly affecting the manner in which he [or she] lives, but our courts have repeatedly warned that the criminal justice system should not be employed to perform the functions of a debt collection agency.

*Id.* at 296 (citations omitted).

¶13 Here, the record teems with substantial reasons that probation should have been terminated. Woodford immediately completed anger management

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<sup>3</sup> WIS. STAT. § 973.09(3)(c).

counseling after sentencing. He was faithfully paying \$200 per month towards restitution. He was maintaining full-time employment. His agent specifically noted Woodford was cooperative with supervision. In other words, during his one-year term of supervision, Woodford had met or exceeded the rehabilitative goals the court set in the conditions of probation. Neither the State nor the victim contradicted this finding; both only asked that probation be extended to facilitate the collection of restitution.

¶14 In *Olson*, we acknowledged the law’s increased emphasis on a victim’s right to compensation, but we noted that it does not mandate a defendant be kept on probation indefinitely. *See id.* at 297. In this case, Woodford was paying \$200 per month and, when the agent requested a court review hearing, Woodford still owed a balance of \$37,244.33. If he continued to make the \$200 monthly payment, his probation would not be discharged for another fifteen and one-half years. The law does not countenance such a result. *See id.*

¶15 In extending probation because it was a “routine and standard practice,” the court did not engage in the decision-making process. In *State v. Martin*, 100 Wis. 2d 326, 327, 302 N.W.2d 58 (Ct. App. 1981), we held it is improper for a court to approach sentencing decisions with an inflexibility that bespeaks a made-up mind. An extension of probation must be based on the facts and circumstances of the particular case and the particular defendant before the court—not on the individual judge’s “routine and standard practice.” The import of the court’s remarks is that it had a standard policy in such cases—a *custom* to extend probation when there was high restitution. This mechanistic practice is not the demonstration of a rational decision-making process that would be used by a reasonable judge.

¶16 Finally, the court misused its discretion in failing to consider a viable alternative to the extension of probation. WISCONSIN STAT. § 973.09(3)(b) requires a court to enter a civil judgment for the amount of unpaid restitution when probation ends. Converting the remaining restitution balance into a civil judgment protects the interests of the victims and gets the court out of the debt collection business.

*By the Court.*—Order reversed.

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

