

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 20, 2010**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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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. 2009AP1379-CR**

**Cir. Ct. No. 2007CM220**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ERIC D. GENGE,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Walworth County:  
MICHAEL S. GIBBS, Judge. *Affirmed.*

¶1 ANDERSON, J.<sup>1</sup> Eric D. Genge takes issue with the circuit court's finding that paying \$1329.42 towards court ordered restitution of \$20,206.37 over

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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.

a two-year period was not a good faith effort to pay restitution and the ensuing decision to extend his probationary term an additional two years. We affirm, because during his two years on probation, Genge failed to meet the rehabilitative goals of probation.

¶2 In 2007, Genge entered guilty pleas to one count of criminal damage to property and one count of criminal trespass to a dwelling. The circuit court withheld sentence and placed Genge on concurrent terms of probation and ordered restitution as a condition of probation. At a subsequent restitution hearing, it was determined that Genge owed a total of \$20,206.37 in restitution to the victims of his destructive outburst.

¶3 Prior to the expiration of the probationary term, Genge's probation officer wrote the court reporting that Genge had only paid \$1329.42 towards his restitution obligation. The agent informed the court:

The Department believes Mr. Genge has not made a good faith effort to repay his victims. He has not found gainful full time employment in the past 2 years. He states he suffers from PTSD, but has not sought treatment at the VA even though this has been discussed with him. He continues to tell people that he is going to deploy soon, but he isn't eligible while on supervision.

¶4 A hearing was conducted on this recommendation. Genge told the court that shortly after he was sentenced in 2007, the company he worked for folded and since then his only income has come from the Army Reserves. He said that he moved to Juneau county only to discover that it had a high unemployment rate and he could not find a job. He went on to explain that he wanted to work for the military full time, but the Army would not accept him because he was on probation. When asked why he has not paid more toward the restitution

obligation, Genge offered that he had a child support obligation and living expenses each month.

¶5 The circuit court ordered Genge's probationary term extended two years, explaining that it was not the victims' fault, his child's fault, nor the military's fault that Genge had a restitution obligation. The court commented that it would be unfair to the victims to let Genge walk away from his obligations:

I am going to find that you have not made a good faith effort, and I am going to extend your supervision for a period of two years.

You were given an option to get out of this faster. You are going to have to come up with something. You know what? You don't get to pursue your dream because you're on probation. You're on probation because of you. They didn't go out looking for you. You went off and did this. You created a crime, injured somebody and racked up a huge amount of restitution and now you don't want to pay and you want to get on with your life. No. That's not fair to the victim.

So I am going to extend the probation for two years. If you want to get off probation and get on with your life, pay it. Figure out how you're going to pay it. Sell something. Whatever you've got to do short of committing another crime.

¶6 Genge has come to this court arguing that the sole reason his probationary term was extended was his failure to pay restitution. He claims that he has paid to the best of his ability and cites *Huggett v. State*, 83 Wis. 2d 790, 266 N.W.2d 403 (1978), for the proposition that probation cannot be extended simply to collect unpaid restitution. He also claims that the statements made by

his probation agent are “questionable.” Specifically, he challenges the statement that he could not deploy with the Reserves because he was on probation.<sup>2</sup>

¶7 The sole issue on appeal is whether the circuit court erroneously exercised its discretion by extending Genge’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, 292-93, 588 N.W.2d 256 (Ct. App. 1998) (citations omitted).

¶8 In *Olson*, this court reviewed the law<sup>3</sup> on extending probation to continue the collection of restitution as established in *Huggett* and reaffirmed in *State v. Davis*, 127 Wis. 2d 486, 381 N.W.2d 333 (1986). See *Olson*, 222 Wis. 2d at 294-96. 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.

¶9 We then commented:

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<sup>2</sup> Contrary to Genge’s assertion, the circuit court did not approve of his deployment with the military; it noted on his request that approval had to come from his probation agent.

<sup>3</sup> WIS. STAT. § 973.09(3)(a) and (b) (1985-86).

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 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).

¶10 When the hearing started, the circuit court knew, from the probation agent's letter, more than Genge's dismal payment record. The circuit court knew that Genge had been unemployed for most of the probationary term and had failed to seek treatment from the VA for his PTSD, even after being told to do so. The circuit court could therefore conclude that, if probation were extended, Genge could receive treatment for PTSD and gain full-time employment, thereby serving the rehabilitative goal of probation, *see Huggett*, 83 Wis. 2d at 798, and, as a result, make more than negligible payments.

¶11 We agree with Justice Ceci's dissent in *State v. Jackson*, 128 Wis. 2d 356, 370, 382 N.W.2d 429 (1986):

If restitution is to promote the goals which this court identified in *Huggett v. State*, 83 Wis. 2d 790, 798, 266 N.W.2d 403 (1978), then restitution as a condition of probation must not be reduced to a mere suggestion or proposal, to be met only if it does not interfere with the normal lifestyle of the defendant during the probationary period.

¶12 While Genge's probationary term was extended to get more substantial payments towards his restitution obligation, the extension also encompasses the objectives of securing treatment for Genge's self-reported PTSD and securing him full-time employment. Both of these objectives meet the goals of probation: "the rehabilitation of those convicted of crime and the protection of

the state and community interest.” *Id.* (citation omitted). Therefore, we conclude that the circuit court did not erroneously exercise its discretion when it extended Genge’s probationary term and affirm.

*By the Court.*—Order affirmed.

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

