COURT OF APPEALS
DECISION
DATED AND FILED

April 27, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP854 **Cir. Ct. No. 2008CF2939**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER L. MCGEE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Christopher McGee, *pro se*, appeals from an order denying a postconviction motion under WIS. STAT. § 974.06 (2007-08).[1] McGee

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

pled guilty to felony fleeing from police and the circuit court sentenced him to two years of initial confinement and one year of extended supervision, to run consecutively "to time now being served and [20]03CF005408." McGee argues that the circuit court could not order this sentence to run consecutively to the sentence in the 2003 case because he had not yet been revoked in the 2003 case when this sentence was imposed. McGee is incorrect and, therefore, we affirm.

¶2 WISCONSIN STAT. § 973.15(2)(a) states, in pertinent part, that a "court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously." The sentence in the 2003 case was imposed on December 9, 2004, when the court sentenced McGee to one year and two months of initial confinement and one year and six months of extended supervision.[2] The plain language of § 973.15(2)(a) authorizes the sentence imposed in this case.

¶3 McGee relies on ***Drinkwater v. State***, 69 Wis. 2d 60, 74, 230 N.W.2d 126 (1975), where the supreme court ruled that "[a] sentence imposed upon the revocation of probation cannot be made consecutive to a sentence previously imposed." McGee's argument has already been rejected by this court. In ***State v. Cole***, 2000 WI App 52, ¶¶2, 5, 233 Wis. 2d 577, 608 N.W.2d 432, the defendant similarly relied on ***Drinkwater*** to argue that a consecutive sentence could not be imposed because parole had not yet been revoked. Noting that WIS. STAT. § 973.15 had been amended since ***Drinkwater***, this court held that the

[2] The particulars of the sentence in the 2003 case are taken from the court record events maintained by the clerk of the circuit court, available on the Wisconsin Circuit Court Access website. McGee does not dispute the accuracy of that information.

"sentence on the first conviction was imposed at the time of sentencing" and, therefore, consecutive sentences were permissible under § 973.15(2)(a). ***Cole***, 233 Wis. 2d 577, ¶¶7-8; *see also* ***State v. Thompson***, 208 Wis. 2d 253, 256-57, 559 N.W.2d 917 (Ct. App. 1997) (where a four-year prison sentence was imposed and stayed and the defendant was placed on probation, "[r]evocation of probation is not required to actually *impose* the sentence. The revocation merely triggers the execution or implementation of the sentence.") (emphasis in original)).

¶4 Because WIS. STAT. § 973.15(2)(a) expressly permits consecutive sentences under the facts of this case, the circuit court properly denied McGee's motion.

By the Court.—Order affirmed.

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