

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 23, 2012

Diane M. Fremgen
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. 2011AP2833-CR

Cir. Ct. No. 2011CF288

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JACQUELINE R. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Jacqueline R. Robinson appeals a judgment convicting her of one count of possession of a controlled substance and two counts of battery to a police officer. She also appeals an order denying her postconviction motion. Robinson argues that the circuit court violated her state

and federal constitutional rights to be free from double jeopardy when it increased her original sentence. We affirm.

¶2 The circuit court sentenced Robinson to forty-two months of imprisonment on the possession conviction, with eighteen months of initial confinement and twenty-four months of extended supervision, concurrent to her other sentences, and sixty months of imprisonment on each of the battery convictions, with twenty-four months of initial confinement and thirty-six months of extended supervision, to be served concurrently to each other and to her other sentences. One day after sentencing, the circuit court recalled the case and stated that it made a mistake. The circuit court explained that the sentence it imposed “did not reflect [its] intent as far as a fair sentence in this case” because the circuit court mistakenly believed that Robinson had been sentenced to a consecutive nine-month term in an unrelated Waukesha case when, in fact, she had been sentenced to a nine-month concurrent term in that unrelated case. In light of the shorter total period of time Robinson would spend incarcerated, the circuit court increased Robinson’s sentence for the two battery convictions to sixty-nine months of imprisonment each, with thirty-three months of initial confinement and thirty-six months of extended supervision, to be served concurrently to each other and to Robinson’s other sentences. The new sentence increased Robinson’s total period of initial incarceration by nine months.

¶3 A sentencing court violates double jeopardy when it increases a previously imposed sentence if the defendant had a legitimate expectation of finality in the original sentence. *State v. Gruetzmacher*, 2004 WI 55, ¶33, 271 Wis. 2d 585, 679 N.W.2d 553. Whether a defendant has a legitimate expectation of finality in a sentence is “the analytical touchstone” for double jeopardy analysis and depends on the extent to which the defendant believed the sentence was final

and the legitimacy of the defendant's expectation. *State v. Jones*, 2002 WI App 208, ¶10, 257 Wis. 2d 163, 650 N.W.2d 844. To address these issues, the circuit court may consider many different factors, including whether the sentence has been completed, the passage of time since sentencing, whether an appeal is pending, whether there was an error of law or misstatement of fact at the sentencing hearing, and whether the defendant engaged in misconduct in obtaining the sentence. *Id.* Whether the defendant had a legitimate expectation of finality in a sentence is a question of law that we review independently of the circuit court. *State v. Burt*, 2000 WI App 126, ¶7, 237 Wis. 2d 610, 614 N.W.2d 42.

¶4 Addressing the factors enumerated in *Jones*, Robinson contends that she had a legitimate expectation of finality in the sentence because the circuit court immediately remanded her to custody after sentencing to begin serving her term of initial incarceration, there were no legal errors or misstatements of fact during the sentencing hearing, and she did not engage in any deception or misconduct that influenced the circuit court when it imposed the first sentence.

¶5 Robinson served only one day of her sentence when the circuit court realized its mistake about the disposition in the unrelated Waukesha case and recalled Robinson to increase her sentence. In *Burt*, we held that the circuit court did not violate double jeopardy when it changed a sentence that it had imposed concurrently to be served consecutively later the same day of the initial sentencing in order to correct a “slip of the tongue.” *See Burt*, 237 Wis. 2d 610, ¶12. We explained that “[t]he double jeopardy clauses did not attach a degree of finality to [the] original sentence that prevented the trial court from correcting its error later in the same day.” *Id.*, ¶11. The difference in time between the circuit court's action in *Burt* and the circuit court's action here is a matter of hours, not days. While Robinson's expectation in the finality of her sentence was not illegitimate

because sentencing proceeded without any error or malfeasance on her part, the sentence did not yet have a degree of finality that prohibited the circuit court from correcting its own mistake the day after the initial sentencing. Therefore, we conclude that the circuit court did not violate the double jeopardy clause when it increased Robinson's sentence.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

