



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 27, 2013

To:

Hon. John R. Race
Circuit Court Judge
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Sheila Reiff
Clerk of Circuit Court
Walworth County Courthouse
P.O. Box 1001
Elkhorn, WI 53121-1001

Joshua Patrick Grube
Assistant District Attorney
P.O. Box 1001
Elkhorn, WI 53121-1001

Marguerite M. Moeller
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jason A. Sanders 213451
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

You are hereby notified that the Court has entered the following opinion and order:

2012AP79

State of Wisconsin v. Jason A. Sanders (L.C. #2005CF170)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Jason A. Sanders appeals from an order denying a motion to correct or vacate his sentence. He contends that the circuit court erroneously extended his probation. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In 2005, Sanders was convicted following a guilty plea of one count of uttering a forgery. The circuit court withheld sentence and placed Sanders on probation for four years. As Sanders' probation neared its completion, the court issued an order in March 2009, extending it for an additional four years due to outstanding court costs.

In December 2011, Sanders filed a motion to correct or vacate his sentence. In it, he challenged the circuit court's extension of his probation as excessive. The circuit court denied Sanders' motion on the ground that he had previously litigated the issue.² This appeal follows.

On appeal, Sanders contends that the circuit court erroneously extended his probation. He maintains that he was pressured into waiving a hearing on the department of corrections' request to extend his probation. He further maintains that the court lacked statutory authority to extend his probation by four years, as a total of eight years of probation was beyond the maximum term of imprisonment that could be imposed for his crime.³

As noted by the State, there are several problems with Sanders' argument. First, the order extending Sanders' probation was entered in March 2009, a full two years and nine months before he filed his motion to correct or vacate his sentence. If Sanders had wanted to appeal that order, he should have done so within the time limits specified in WIS. STAT. § 808.04(1). Having failed to do so, his motion to the circuit court was untimely.

² The State concedes that the circuit court's reason for denying Sanders' motion was erroneous, as none of his prior motions had challenged the extension of his probation. Nonetheless, the State submits that the circuit court's ruling can be affirmed on other grounds. *See, e.g., State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987). We agree.

³ At the time of Sanders' conviction, the maximum term of imprisonment for uttering a forgery was six years. *See* WIS. STAT. §§ 943.38(2) and 939.50(3)(h) (2005-2006).

Second, Sanders' argument that he was pressured into waiving a hearing on the department of corrections' request to extend his probation is not properly before this court because Sanders did not present it to the circuit court in his motion. *See State v. Schulpius*, 2006 WI 1, ¶26, 287 Wis. 2d 44, 707 N.W.2d 495 (appellate court generally does not review an issue raised for the first time on appeal).

Finally, contrary to Sanders' contention, the circuit court did have statutory authority to extend his probation beyond the maximum term of imprisonment that could be imposed for his crime. As this court explained in *State v. Luu*, 2009 WI App 91, ¶17, 319 Wis. 2d 778, 769 N.W.2d 125, "the plain language of WIS. STAT. § 973.09 authorizes probation extensions beyond the original term of probation, not limited by statutory limits on the original term."

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals