STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 92-0828-CR,
92-0829-CR, 92-0830-CR,
& 92-0831-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LAWRENCE HARRIS,

Defendant-Appellant.

Appeal From The Judgments And Orders Entered In The Circuit Court For Milwaukee County, The Honorable Janine P. Geske, Circuit Judge, Presiding

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BRIEF AND APPENDIX OF APPELLANT

ROBERT R. HENAK
SHELLOW, SHELLOW & GLYNN, S.C.
222 East Mason Street
Milwaukee, Wisconsin 53202
(414) 271-8535

Attorney for Defendant-
Appellant

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STATEMENT OF ISSUES

1. Whether the trial court was deprived of jurisdiction to proceed in the escape prosecution when Mr. Harris was unreasonably detained for six days following his arrest before being taken to court and charged with a crime.

The trial court held that it was not deprived of jurisdiction based upon the six day delay.

2. Whether Mr. Harris is entitled to resentencing on the grounds that the trial court improperly based its sentence upon erroneous information in violation of his rights to due process.

The trial court held that the defendant was not entitled to resentencing.

3. Whether Mr. Harris is entitled to resentencing based upon the trial court's error in holding that correction of its erroneous view of the defendant's potential for rehabilitation was not a "new factor" which could justify sentence modification.

The trial court held that Mr. Harris was not entitled to resentencing based upon this new factor.

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is appropriate in this case under Wis. Stat. (Rule) 809.22. Appellant's arguments clearly are substantial and do not fall within that class of frivolous or near frivolous arguments concerning which oral argument may be denied under Rule 809.22(2)(a). At such time as counsel for appellant has had sufficient opportunity to review the brief of respondent, it may be that the briefs fully present and meet the issues on appeal, rendering oral argument technically unnecessary under Rule 809.22(2)(b). Until such time, however, Appellant wishes to reserve his right to request oral argument.

Publication is also appropriate in this case. In State ex rel. Van Ermen v. Burke, 30 Wis. 2d 324, 140 N.W.2d 737, 744 (1966), the Supreme Court specifically reserved decision on the issue whether dismissal is an appropriate remedy for failure to provide a person arrested without a warrant a probable cause determination within a reasonable time. This Court likewise did not reach the issue in State v. McKinney, ___ Wis. 2d ____, 483 N.W.2d 595 (Ct. App. 1992). As such, this appears to be an issue of first impression, the resolution of which will have significant impact throughout the state. Publication thus is appropriate under Wis. Stat. (Rule) 809.23(1)(a)1 & 5.

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STATE OF WISCONSIN,

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LAWRENCE HARRIS,

Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF THE CASE

Nature of the Case

Defendant-Appellant, Lawrence Harris, appeals from judgments of conviction and sentence entered August 1, 1991, and from denial of his motions for post-conviction relief by orders dated March 19, 1992, entered in the Circuit Court of Milwaukee County, the Honorable Janine P. Geske, presiding. The appeal is filed pursuant to Wis. Stat. §808.03 and Wis. Stat. (Rule) 809.30(2)(j). By order dated April 13, 1992, this Court ordered these cases consolidated for purposes of appeal.

Procedural History of the Case

By criminal complaint filed January 16, 1991, Mr. Harris was charged in Milwaukee County Case No. F-910183 with the first-degree intentional homicide of Vanessa Cameron in violation of Wis. Stat. §940.01 (1989) and the attempted first-degree intentional homicide of Claude Daniels, in violation of Wis. Stat. §§939.32 & 940.01 (R2).[1] Mr. Harris was charged with each as party to a crime, Wis. Stat. §939.05, both offenses having been committed directly by Carmen Cooper while Harris was present. Following a preliminary hearing on January 25, 1991 (R30), the court bound Mr. Harris over for trial (R30:31), and the state filed an information charging the same two offenses (R6; R30:31).

By separate criminal complaints filed January 17, 1991, Mr. Harris was charged in Milwaukee County Case Nos. F-910206 and F-910209 with separate armed robberies in violation of Wis. Stat. §943.32(1)(b) & (2) (R36; R55). On January 28, 1991, Mr. Harris waived preliminary hearing in both cases (R38; R57), and the state filed informations alleging the same offenses charged in the complaints (R37; R56). (R52:3-5).

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[1] Throughout this brief, references to the record will take the following form: (R__:__), with the R__ denoting the record document number and the following :__ reference denoting the page number of the document. Where the referenced material is contained in the Appendix, it will be further identified by Appendix page number as App. __.

On March 29, 1991, ADA Mark Williams filed an amended information in Milwaukee County Case No. F-910183, dropping the charge of first-degree intentional homicide against Mr. Harris (R13; R31:6). Williams stated that this action was not because of any plea agreement but because he would be unable to meet the state's burden of proving Mr. Harris' criminal liability for the homicide beyond a reasonable doubt (R31:3-5).

Also on March 29, 1991, Mr. Harris entered a plea of guilty to the amended information in Case No. F-910183 charging him with the attempted first-degree intentional homicide of Claude Daniels as party to a crime. Although conceding his presence at the scene of the offense and his involvement in the beating of Mr. Daniels, Harris vehemently denied any intent to kill him. The plea thus was entered under the authority of North Carolina v. Alford, 400 U.S. 25 (1970). (R31:5-19).

On March 29, 1991, Mr. Harris also pled guilty to the two separately charged armed robberies in Milwaukee County Circuit Court Case Nos. F-910206 and F-910209. (R31:19-21). All pleas were made pursuant to an agreement that the state would recommend 45 years imprisonment (R31:2, 3-5).

While awaiting sentencing in these cases, Mr. Harris was arrested on May 11, 1991 for attempted escape (R72:1; R76:1). By criminal complaint filed May 17, 1991, Mr. Harris was charged in Milwaukee County Circuit Court

Case No. F-911763 with attempted escape in violation of Wis. Stat. §§946.43(3)(a) & 939.05, assault by a prisoner in violation of Wis. Stat. §§946.43(2) & 939.05, and battery by a prisoner in violation of Wis. Stat. §§940.20(1) & 939.05 (R73).

At his initial appearance in the escape case on May 17, 1991, Mr. Harris reserved jurisdictional challenges and objected to the six-day delay in his appearance before a magistrate, referring to "the new supreme court ruling" (R88:2-3). The court commissioner deferred decision on the objection to the preliminary hearing court (R88:3).

On May 24, 1991, counsel for Mr. Harris[2] advised the court that he would be moving to dismiss the attempted escape charges on due process grounds for delay in the initial appearance. (R89:2). The prosecutor suggested that the motion should go to the trial court and the court commissioner agreed (R89:3). Mr. Harris then waived the preliminary hearing (id:4-5; R77), and the state filed an information charging the same offenses as were set forth in the complaint (R89:5; R74).

Mr. Harris filed a written motion to dismiss and a supporting memorandum on May 29, 1991 (R72:2; R75). The defendant specifically alleged that the trial court lost

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2 The State Public Defender appointed new counsel for Mr. Harris prior to the May 24, 1991 court date (see R32:2).

jurisdiction over the case because Mr. Harris was arrested on the escape charges on May 11, 1991, but was not brought before a judicial officer on those charges until May 17, 1991 (R75).

On June 3, 1991, the trial court, Honorable Janine P. Geske, presiding, denied the motion:

> THE COURT: Well, I'm going to find that there -- the motion to dismiss should be denied for the following reasons: I think there are a number of reasons for it to be denied. I think the obvious one was that the defendant was in custody at all times. He wasn't going anywhere, and it really isn't -- it's an argument that he was -- it was an undue delay between the time of the alleged commission of the offense, which was May 11th of 1991, in the county jail, and the time of the appearance in intake court which was May 17th of 1991.
>
> As far as I can tell, he was never admitted to bail on this particular case. He was being held on the other cases. He wasn't going anywhere. There is no prejudice alleged by the defense by the delay, certainly wasn't a long delay in terms of denying any kind of due process or speedy trial rights.
>
> In addition, that particular case, the United States Supreme Court case is a, as I read it, a civil rights suit and the Court held that if a defendant was not given the right to appear in front of a magistrate or at least have a probable cause determination within a 48-hour period of time, the burden shifted to the State to show that the length of time between the initial detention and the time of the probable cause finding was reasonable.
>
> That case did not talk about any impact on the criminal case in terms of wheth-

> er or not the Court lost jurisdiction. I don't read it as such, so that if even the defendant had only been in custody in this case, I don't think the allegation before me rises to the level of lack of jurisdiction over this case, but under the facts of the cases before me now, clearly the defendant is being held on other matters and the time is not unreasonable and, therefore, the motion is denied.

(R32:5-6).

On August 1, 1991, Mr. Harris pled guilty to the escape related charges (R34:6-14) and the four cases proceeded to sentencing. The state recommended a total sentence of 45 years imprisonment on all four cases (id.:3-4, 16-19). Mr. Harris' counsel recommended a total of 23 years imprisonment (id.:19-23).

The trial court, Hon. Janine P. Geske, presiding, sentenced Mr. Harris to a total of 72-1/2 years incarceration out of a possible maximum of 77-1/2 years on all four cases. It sentenced Mr. Harris to 15 years incarceration on the attempted murder charge, to the maximum of 20 years on each of the robbery cases, and to a total of 17-1/2 years imprisonment on the three escape related charges. The court ordered all sentences to be served consecutively. The court also imposed mandatory surcharges of $50 on each count of conviction, totaling $300. (R34:44; R18; R41; R61; R79; App. 1, 3, 5, 7; see R34:25-45).

Mr. Harris timely filed his Notice of Intent to Pursue Post-Conviction Relief in these cases on August 9, 1991 pursuant to Wis. Stat. (Rule) 809.30(2)(b) (R19; R42;

R62; R80). On January 23, 1992, he timely filed his Motions for Post-Conviction Relief in Milwaukee County Case Nos. F-910206, F-910209 and F-911763 (R43; R63; R81). He timely filed his Motion for Post-Conviction Relief in Milwaukee County Case No. F-910183 on January 31, 1992 (R21).[3] Each of the motions requested modification of Mr. Harris' sentences and raised identical or virtually identical issues. The post-conviction motions were fully briefed by the parties (R22; R23; R24).[4]

The trial court held a joint evidentiary hearing on the post-conviction motions on March 19, 1992 (R92), and denied the motions by written orders on that same date (R25; R47; R67; R85; App. 2, 4, 6, 8).

Mr. Harris timely filed his Notice of Appeal to this Court in each case on March 30, 1992 (R26; R48; R68; R86). By order of this Court dated April 13, 1992, the Court consolidated these cases for purposes of appeal (R28; R50; R69; R87).

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[3] Although there was some overlap in the trial court proceedings in these four cases, there was not a total overlap. Different transcripts were served upon appellate counsel at different times, resulting in different due dates for the motions under Wis. Stat. (Rule) 809.30(2)(h). The motions in F-911763 and F-910183 were timely filed under Rule 809.30(2)(h). By order dated January 28, 1992, this Court extended the due date in F-910206 and F-910209 to January 23, 1992.

[4] Because the issues were virtually identical, identical supporting (R22; R44; R64; R82), opposition (R23; R45; R65; R83) and reply memoranda (R24; R46; R66; R84) were filed in each of the four cases.

Statement Of Facts

Attempt murder -- F-910183

On October 27, 1990, Rosetta Perry, her boyfriend Carmen Cooper, and her three sons, Anthony Davenport, Lovelle Harris, and Lawrence Harris, tried to find LaTonya Pritchett to recover some jewelry which Ms. Pritchett had stolen from Ms. Perry (R2:3). At about 7:45 that evening, they arrived at 2502 West Lloyd Street in Milwaukee and spoke with Claude Daniels (id.).

Apparently believing that Daniels knew where Pritchett was but refused to tell them, the four men with Perry proceeded to take turns beating Mr. Daniels about the legs with a baseball bat and Davenport beat him on the legs with a hammer (R2:3; R30:5-7). When Daniels stated that he knew where Pritchett lived, the five took him there. She was not there, however, and they returned to the West Lloyd Street address (R30:22).

Perry ultimately told Cooper "We have to do them both" (R2:3-4; R30:8) and Cooper shot Daniels and Vanessa Cameron, apparently just an innocent bystander. Each was shot in the back of the head. (R2; R30:9, 22, 23-24, 28). Ms. Cameron died (R30:24; 29). Mr. Daniels survived.

Upon his arrest on January 15, 1991, Mr. Harris gave a detailed statement of his involvement in the beating of Mr. Daniels and the circumstances surrounding

Cooper's shooting of Daniels and Cameron (R30:21-29).

Armed Robbery -- F-910206

On the evening of January 14, 1991, David Volden was working in the enclosed cashier's area of an Amoco station in Shorewood, Wisconsin. Derrick Turner entered the station and picked up a few items. When Mr. Volden opened the door to the cashier's area to give Mr. Turner an additional item, Turned pointed a gun at him. Mr. Volden briefly wrestled with Turner but Turner pushed him down and told him not to be stupid. Turner then made Mr. Volden turn off all of the station's lights and directed him into the back storage room where Turner blindfolded him and told him to lie on the floor. (R36:2-3).

Mr. Harris then entered the store and asked where the cigarettes were kept (R36:3). Police officers saw him in the cashier's cage and, when they stopped to investigate, Mr. Harris told them that he was the station attendant (id.:1-2). The officers knew otherwise and arrested Mr. Harris (id.:2). They also ordered Mr. Turner out of the storage room and arrested him as well (id.).

The station's cash drawer was missing approximately $500; Mr. Harris had $421 when arrested. (R36:3).

Following his arrest, Mr. Harris waived his constitutional rights and voluntarily gave a statement detailing his involvement in the robbery attempt (R36:4-5).

Armed Robbery -- F-910209

On the afternoon of December 28, 1990, Mr. Harris entered a Greendale, Wisconsin, Spic And Span dry-cleaners. After asking if they were accepting job applications, Mr. Harris showed the attendant, Ms. Joanne Nagy, a small black handgun and said "This is a robbery, where do you keep the money?" Ms. Nagy gave him the key to the cash drawer. (R55:1-2).

When Ms. Nagy began to breathe very heavily, Mr. Harris told her, "I'm not going to hurt you, I'm not going to hurt you Joanne." He had her walk to the back of the store and sit in the bathroom. A second person then entered the store and tied Ms. Nagy's wrists and ankle to a rail in the bathroom. (R55:2).

A total of about $81.00 was taken, along with a television set, items of clothing, and Ms. Nagy's purse, containing her house keys and several credit cards (R55:3).

Following his arrest for the Amoco station robbery, Mr. Harris waived his constitutional rights and gave the police a detailed statement of his involvement in this offense (R55:3).

Escape Related Charges -- F-911763

On May 11, 1991, while incarcerated in the Milwaukee County Jail pending sentencing in the other cases, Mr. Harris and another inmate, Lamonte Gregory, were involved in an aborted escape attempt. After Deputy Sheriff

Lee Heidemann allowed Harris into the deputy corridor to move a television, Harris and Gregory grabbed Heidemann and handcuffed him to the plumbing in a bathroom. Heidemann also was gagged, blindfolded, and tied at the ankles. As a result, "he sustained an abrasion to the top of his head, a small cut to his left thumb, and ... his arm was sore." (R73:2-3).

When Deputy Sheriff James Decker and Trustee Thomas Rohleder subsequently came to the tier with food for the inmates, they were grabbed and struck by Harris and Gregory (R73:3-4). As a result, Decker received a cut, for which he received three stitches, and various other abrasions and bruises (R73:4).

Additional deputies then arrived on the tier and arrested Harris and Gregory (R73:5; see R72:1; R76:1).

Following his arrest, Mr. Harris waived his constitutional rights and gave a detailed statement concerning his involvement and that of others in the escape attempt (R73:5-7).

ARGUMENT

I.

THE TRIAL COURT WAS DEPRIVED OF JURISDICTION TO PROCEED IN THE ESCAPE PROSECUTION WHEN MR. HARRIS WAS UNREASONABLY DETAINED FOR SIX DAYS FOLLOWING HIS ARREST BEFORE BEING TAKEN TO COURT AND CHARGED WITH A CRIME.

Lawrence Harris was arrested on May 11, 1991 in relation to his attempted escape from the Milwaukee County

Jail (R72:1; R76:1). Nevertheless, a criminal complaint was not issued regarding these charges until May 17. 1991, and Mr. Harris did not make an initial appearance until that date (R72:1; R73). Mr. Harris submits that this six day delay between his arrest and his initial appearance before a judicial officer deprived the circuit court of jurisdiction to proceed over his person and over the subject matter in the escape case.[5]

Wis. Stat. §§970.01(1) & (2), in pertinent part, provide as follows:

> 970.01 Initial Appearance Before A Judge.
>
> (1) Any person who is arrested shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed... .
>
> (2) When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.

Section 970.01(1) thus requires that an individual accused of a crime be brought before a judge within a reasonable period of time after being arrested. See also

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[5] Much of the argument on this issue is taken from the appellant's brief in State v. Abraham McKinney, Jr., ___ Wis. 2d ___, 483 N.W.2d 595 (Ct. App. 1992), written by Assistant State Public Defenders Louis B. Butler, Jr. and Maria L. N. Alderink. Because McKinney, unlike Mr. Harris, was brought before a magistrate within one day after his arrest, this Court in McKinney did not have the opportunity to address the question of the proper remedy for a violation of Wis. Stat. §970.01 and due process resulting from an unreasonable delay between arrest and initial appearance. This case directly presents that issue for decision by this Court.

Schuette v. Drake, 139 Wis. 18, 120 N.W. 393 (1909). The right to be brought before a judge is a due process right guaranteed by Article I, §8 of the Wisconsin Constitution, Wagner v. State, 89 Wis. 2d 70, 277 N.W.2d 849, 851 (1979); Phillips v. State, 29 Wis. 2d 521, 139 N.W.2d 41, 47 (1966), and may be protected by the Fourteenth Amendment as well. State ex rel. Van Ermen v. Burke, 30 Wis. 2d 324, 140 N.W.2d 737, 743-44 (1966). See also State v. McKinney, ___ Wis. 2d ___, 483 N.W.2d 595, 597 (Ct. App. 1992).

The Wisconsin statutory scheme provides that the requirement of a judicial determination within a reasonable period of time, as well as the requirement that a complaint be filed "forthwith," are mandatory. When the word "shall" is used in a statute, it is presumed mandatory. In Matter of E. B., 111 Wis. 2d 175, 330 N.W.2d 584, 590 (1983); Karow v. Milwaukee County Civil Service Commission, 82 Wis. 2d 565, 263 N.W.2d 214, 217 (1978). This is particularly true where the words "shall" and "may" are used in the same section of a statute, given the court's holding that it is inferable that the legislature was cognizant of the different denotations and intended the words to have their precise meanings. E. B., 330 N.W.2d at 590; Karow, 263 N.W.2d at 217; Scanlon v. Menasha, 16 Wis. 2d 437, 114 N.W.2d 791, 795 (1962). Section 970.01 uses the terms "shall" three times and "may" once when it provides that the hearing "shall" take place within a reasonable

time frame, the defendant "may" waive his or her appearance at the initial appearance, any waiver of appearance "shall" be placed on the record and the complaint "shall" be filed forthwith. Clearly, the legislature was aware of the different denotations when it drafted the statutory language and intended the words to have their precise meaning.

Lengthy detentions understandably are looked upon with extreme disfavor by the Wisconsin appellate courts. Van Ermen, 140 N.W.2d at 744; Wagner, 277 N.W.2d at 851. The Wisconsin Supreme Court previously recognized that a 58 hour detention, without satisfactory explanation, would be unreasonable and that Sundays and holidays, standing alone as an explanation, do not justify an unreasonable detention. Reimers v. State, 31 Wis. 2d 457, 143 N.W.2d 525, 532, cert. denied, 385 U.S. 980 (1966). The Court, however, has not established a set period of time beyond which a suspect must either be released or charged. Wagner, 277 N.W.2d at 852.

The United States Supreme Court has ruled that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest. Gerstein v. Pugh, 420 U.S. 103, 125 (1975). Recently, that Court held that, as a general matter, a jurisdiction which provides judicial determinations of probable cause within 48 hours of arrest will comply with the Fourth

Amendment's promptness requirement. County of Riverside v. McLaughlin, 500 U.S. ___, 111 S.Ct. 1661, 1670 (1991). The Court further stated that when an arrested individual does not receive a probable cause determination within 48 hours, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. Id. The fact that a case may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Similarly, intervening weekends do not qualify as an extraordinary circumstance. Id.

Admittedly, McLaughlin defines the promptness requirement of the Fourth Amendment and not the reasonableness requirement of Section 970.01(1). There is no question, however, that the statute must comply with the Constitution or be found unconstitutional. Given the Wisconsin Supreme Court's prior language in Reimers, it is clear that the failure to hold a probable cause determination within 48 hours shifts the burden to the State to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. Absent that, any detention in excess of 48 hours would be unreasonable on its face.

The state, however, failed to suggest any possible emergency or extraordinary circumstance as would justify the six day delay in this case. Indeed, the only purported justifications raised by the state were that Mr. Harris was in jail anyway on the prior charges and, in any

event, he was never technically arrested on the escape related charges. The first rationalization is irrelevant and the second is clearly erroneous as a matter of fact.

The argument that Mr. Harris was already in jail anyway is, in essence, a harmless error argument rather than a justification for the delay. The state failed to suggest any reason why the defendant's prior custody status created either an emergency or such an extraordinary circumstance as would require delaying his initial appearance for six days, three times longer than the period deemed reasonable by the United States Supreme Court. It was the state's burden to justify the delay; it failed to do so.

The state's second rationalization for the delay is erroneous as a matter of fact. The record in this case clearly demonstrates that Mr. Harris was in fact arrested on the escape related charges on May 11, 1991. Both the official Judgment Roll (R72:1), and the Milwaukee County Sheriff's Department offense report (R76:1) specifically state that Mr. Harris was arrested on that date.[6] More-

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[6] Because Mr. Harris clearly was arrested on May 11, 1991, six days before his initial appearance on May 17, 1991, this Court's decision in State v. McKinney, ___ Wis. 2d ___, 483 N.W.2d 595 (Ct. App. 1992), does not apply. Although McKinney was held on a probation hold for the same conduct, the trial court held in that case that he was not actually arrested on the criminal charge until he was served with a felony arrest warrant on the day before his initial appearance. 483 N.W.2d at 597. Given this factual finding, this Court understandably held that the 24 hour delay between McKinney's arrest and his initial appearance was reasonable under both §970.01 and the Constitution. Id. at 597-98.

over, the defendant specifically alleged in his motion papers that he was arrested and given Miranda warnings on that date (R75:2).

Once again, it was the state's burden to justify the delay. If the state wished to rely upon the argument that no technical arrest was made, despite what was alleged by the defendant and demonstrated in the Court Record, it was therefore incumbent upon the state to present some evidence in that regard. At the very least, it should have made an offer of proof. It did neither.

Given the clear, unambiguous statutory language and directive, and the state's failure to justify its delay, the question arises as to the appropriate remedy for situations where the state has failed to provide a person arrested without a warrant a probable cause determination hearing within a reasonable time. The Wisconsin Supreme Court previously noted the argument that, in order to prevent a pattern of police conduct involving unreasonable lengths of detention, the court should be able to order the absolute discharge of prisoners so detained. State ex rel. Van Ermen v. Burke, 30 Wis. 2d 324, 140 N.W.2d 737, 744 (1966). Indeed, the Supreme Court specifically reserved the question for further examination in a proper case where the issue was raised in a timely fashion. Id. The Court has not directly decided the issue since, but a review of time violations in other types of cases provides guidance here.

In State v. Rosen, 72 Wis. 2d 200, 240 N.W.2d 168, 172 (1976), the Wisconsin Supreme Court recognized that mandatory statutory time provisions affect the subject matter jurisdiction of a court, and that the failure to adhere to the time limits deprives the court of jurisdiction. The Court applied the holding in upholding the dismissal of a controlled substances code forfeiture action.

Similarly, in In Interest of R.H., 147 Wis. 2d 22, 433 N.W.2d 16, 18, 22 (Ct. App. 1988), aff'd, 150 Wis. 2d 432, 441 N.W.2d 233 (1989), this Court stated that the failure of the trial court to observe mandatory time limits deprives that court of competency to exercise its jurisdiction to hear the matter. The Court concluded that the time limits for holding a dispositional hearing in a juvenile action were mandatory and dismissed the petitions. See also In Interest of C.A.K., 147 Wis. 2d 713, 433 N.W.2d 298 (Ct. App. 1988), aff'd, 154 Wis. 2d 612, 453 N.W.2d 897 (1990) (20-day time limit for filing delinquency petitions is mandatory, such that state's failure to comply with statutory time limit required dismissal of petition with prejudice).

Other decisions which have held that a violation of mandatory time provisions affect the competency of a circuit court to proceed include Jansen Co. v. Milwaukee Area District Board, 105 Wis. 2d 1, 312 N.W.2d 813, 816-17 (1981) (trial court's decision to grant motion after the

verdict was "void as the court lost competency to exercise its jurisdiction" after the time limit under Wis. Stat. §805.16 expired); Brookhouse v. State Farm Mut. Ins., 130 Wis. 2d 166, 387 N.W.2d 82 (Ct. App. 1986) (trial court "lost competency to exercise jurisdiction" and hence to decide late filed motions after a verdict was returned), approved in Harford Ins. Co. v. Wales, 138 Wis. 2d 508, 406 N.W.2d 426, 431-32 (1987); In Matter of Guardianship of N.N., 140 Wis. 2d 64, 409 N.W.2d 388 (Ct. App. 1987) (trial court lacks authority to enlarge the mandatory time limit or extend the temporary placement beyond the time limit under the protective placement provisions of Wis. Stat. §55.06, noting the involuntary restraint placed on the individual's freedom); State ex rel. Lockman v. Gerhardstein, 107 Wis. 2d 325, 320 N.W.2d 27 (Ct. App. 1982) (trial court cannot vary the 14-day time limit for holding a final mental commitment hearing mandated in Wis. Stat. §51.20(7)(c)); and State v. Sykes, 91 Wis. 2d 436, 283 N.W.2d 446 (Ct. App. 1979) (30-day time limit for holding hearing on a detainee request is mandatory and any violation requires discharge of the defendant from the detainer; court states that time is of the essence because injury may be presumed from unnecessarily prolonging the prisoner's status as one subject to a detainer).

In the instant case, judicial review within a reasonable time after arrest is mandatory. The Fourteenth Amendment requires a 48-hour time limit which, if ex-

ceeded, is presumptively unreasonable absent a bona fide emergency or other extraordinary circumstance. The state has offered neither a bona fide emergency nor any extraordinary circumstance; none exists.

The trial court nonetheless denied Mr. Harris' motion. Although its oral decision is not entirely clear, that court seems to rely on three grounds: (1) Mr. Harris suffered no prejudice because he was in jail anyway, (2) the delay was not unreasonable, and (3) the proper remedy for such a violation is not dismissal for lack of jurisdiction (R32:5-6). As legal conclusions, the trial court's reasoning is owed no deference by this Court. E.g., Ball v. Dist. No. 4, Area Board, 117 Wis. 2d 529, 345 N.W.2d 389, 394 (1984). In any event, those reasons are incorrect as a matter of law.

This brief already demonstrated the errors in the trial court's second and third rationales for denying the motion. The harmless error rationale, also raised below by the state, fares no better. Simply put, where, as here, the alleged error deprives the court of jurisdiction, it is inherently prejudicial. As the Supreme Court held in Jansen Co.:

> In ruling the error of the trial court was not prejudicial to the defendant, the court of appeals addressed the wrong question. An order that is adverse to a party and is made after the court has lost the capacity to exercise its jurisdiction is, without a doubt, prejudicial to the party aggrieved.

312 N.W.2d at 817. Also, this Court observed in Sykes, 283 N.W.2d 448, that an additional detainer (such as the arrest in this case) is prejudicial even when the defendant is already incarcerated.

The trial court lost its competency to proceed when the state failed to bring Mr. Harris before a judge within a reasonable period of time and to file a complaint forthwith. Accordingly, this Court should vacate the judgment of the trial court in Milwaukee County Case No. F-911763 and remand the action with directions to dismiss the charge against Mr. Harris.

II.

THE TRIAL COURT'S SENTENCING ERRORS MANDATE RESENTENCING

Despite Mr. Harris' confessions and guilty pleas to every charge which the state believed it reasonably could pursue against him, the trial court sentenced Mr. Harris to the maximum sentence on every charge against him but one, for a total of 72-1/2 years imprisonment in the four cases. This sentence was just shy of the total maximum of 77-1/2 years which he could have received.

Many of the factors contributing to the trial court's sentencing analysis were proper and are not challenged on this appeal. Unknown to that court at the time, however, its sentence was based in significant part upon inaccurate information concerning the defendant's poten-

tial for rehabilitation and his perception of his offenses. Also, the trial court erred at the post-conviction motion hearing in holding that correction of a sentencing court's erroneous view of the defendant's potential for rehabilitation is not a "new factor" under this state's sentence modification jurisprudence.

A. The Trial Court Improperly Based The Defendant's Sentence Upon Erroneous Information, In Violation Of His Rights To Due Process.

It is well settled that a criminal defendant is constitutionally entitled to be sentenced only upon accurate information. E.g., Townsend v. Burke, 334 U.S. 736, 740-41 (1948); Bruneau v. State, 77 Wis. 2d 166, 252 N.W.2d 347, 351 (1977); State v. Skaff, 152 Wis. 2d 48, 447 N.W.2d 84, 86-87 (Ct. App. 1989); U.S. Const. amend. XIV; Wis. Const. art. I, sec. 8. A defendant who requests resentencing due to use of inaccurate information at the original sentencing "must show both that the information was inaccurate, and that the court actually relied on the inaccurate information in the sentencing." State v. Johnson, 158 Wis. 2d 458, 463 N.W.2d 352, 357 (Ct. App. 1990); see United States ex rel. Welch v. Lane, 738 F.2d 863, 865 (7th Cir. 1984).

Mr. Harris satisfied both of these required showings. The trial court and the presentence report gravely misinterpreted Mr. Harris' statements concerning his in-

volvement in the beating of Mr. Daniels. Mr. Harris readily admitted to the presentence author that he participated in that beating by hitting Mr. Daniels in the legs with a bat, but stated that he never hit Daniels above the waist and that, given the circumstances, he was in no position to prevent the shootings of Mr. Daniels or Ms. Cameron (see R92:21-23). Mr. Harris did not assert, as stated in he presentence report and expressly relied upon the the sentencing court (R34:29; R90:4), that he was a mere bystander at the beating or that the beating "wasn't so bad because [he] never struck him over the waist with the bat, just in the legs" (R92:21-23).

There is a great deal of difference between Mr. Harris' actual statements and those attributed to him by the presentence author and relied upon by the sentencing court. Mr. Harris' actual statements confess guilt in the beating, denying only an intent to kill Mr. Daniels. Those statements were made not to minimize the seriousness of the beating, but to distinguish his conduct from a type of conduct (e.g., beating above the waist or around the head), which would evince an intent to kill (an intent he consistently has denied) and to explain why he could not prevent Cooper's significantly more serious and unpredicted conduct of shooting the victims. The statements erroneously attributed to him by the presentence author, on the other hand, express an attempt to minimize his guilt of the entire episode.

Harris clearly did not deny responsibility for his conduct in beating Mr. Daniels. Rather, he readily admitted his guilt both by confessing to the police and by pleading guilty to every charge which the state had any hope of proving against him. Harris' consistent denial of any intent to kill Daniels is consistent both with this ready admission of guilt in the beating and with a reasonable view of the evidence.

The trial court expressly relied upon the misinterpretation of Mr. Harris' statements as denying responsibility for the beating of Mr. Daniels (R34:29). Because the court relied upon inaccurate information in sentencing Mr. Harris, that sentence must be vacated. E.g., Townsend, supra (defendant denied due process when sentencing court treated as convictions three earlier charges which had either been dismissed or resulted in acquittal). Mr. Harris is constitutionally entitled to a fair sentencing proceeding based upon accurate information, an entitlement he has not yet received.

B. The Trial Court Erred In Holding That Correction Of Its Erroneous View Of The Defendant's Potential For Rehabilitation Was Not A "New Factor" Which Could Justify Sentence Modification.

The sentencing transcript reflects that the trial court's perception that Mr. Harris lacked any realistic potential for rehabilitation contributed significantly to his ultimate sentence (R34:38-39, 41-42). In essence, the

trial court viewed Mr. Harris as an irredeemably evil and violent person, such that the public's interests could be served only by locking him away. In the post-conviction motion hearing, however, Mr. Harris established a number of facts which had been either misstated or unknowingly overlooked by all of the parties at the time of sentencing. Combined, these corrected and additional facts demonstrate a much higher potential for rehabilitation on the part of Mr. Harris than that suggested by the presentence report and relied upon by the court.

The defendant argued that correction of the sentencing court's erroneous view of the defendant's potential for rehabilitation is a new factor which could justify sentence modification under Rosado v. State, 70 Wis. 2d 280, 288, 234 N.W.2d 69, 73 (1975) (R22:3-7; R92:27-28). The trial court disagreed (R92:32, 38).

It is well established that "[a] sentence modification motion may be based upon a showing of a new factor." State v. Hegwood, 113 Wis. 2d 544, 335 N.W.2d 399, 401 (1982) (citations omitted). The two-step process for sentence modification on this ground was set forth in State v. Franklin, 148 Wis. 2d 1, 434 N.W.2d 609 (1989). "First, the defendant must demonstrate that there is a new factor justifying a motion to modify a sentence." Id. at 611. Second, the court must make the discretionary determination "whether the new factor justifies modification of

the sentence." Id. A "new factor" is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all the parties." Rosado v. State, 70 Wis. 2d 280, 288, 234 N.W.2d 69, 73 (1975).

The sentencing court's core conclusion concerning Mr. Harris' potential for rehabilitation is summed up by its statement to Mr. Harris that "[e]ach and every time you have some needs you will use the kind of violence you think is necessary in order to meet those needs" (R34:41). Mr. Harris' evidence at the post-conviction hearing, however, showed that this was not an accurate portrayal of Mr. Harris and his rehabilitative potential. While Mr. Harris cannot and does not dispute the senselessly violent nature of these offenses, that evidence demonstrated that he simply is not the inherently and irredeemably violent person which the sentencing court believed it was sentencing on August 1, 1991.

The trial court's view of Mr. Harris' lack of rehabilitative potential was understandable given the information and lack of information then before it. In addition to the violent nature of the offenses to which Mr. Harris had pled guilty, the court was misinformed by the presentence report that Mr. Harris minimized his involve-

ment in the beating of Daniels (R90:4), that his grandmother, the person who probably knew him the best, essentially viewed him as irredeemable (R90:10, 12), and that he had no work history, but rather was supported his girlfriend and his own criminal activity (R90:5, 11).

As demonstrated in the post-conviction hearing, however, this information was either false or misleading and significant additional information concerning Mr. Harris' potential for rehabilitation was omitted.

Ruth Collins, Mr. Harris' grandmother, testified that she was retired after working 31 years as a hospital attendant at Milwaukee County Mental Health (R92:4). She had a very close relationship with Mr. Harris and knew of no one else in the world who knows him better than she does (R92:5). This relationship has lasted Mr. Harris' entire life, Mrs. Collins having essentially raised him and his siblings while their mother, Rosetta Perry, was in prison at various times (R92:5-6).

Mrs. Collins testified that, during the times when Mr. Harris' mother was in prison, he was able to stay out of trouble (R92:7), but that when his mother was released, she would take him back and destroy whatever improvements he and his grandmother had achieved (R92:8).

Mrs. Collins also testified that she did not tell the presentence author that she had essentially written Mr. Harris off as too terrible. She testified that she

never told anyone either that Mr. Harris was a completely anti-social and violent person or that he did not want to work or do anything useful. Indeed, any such statements would have been untrue. (R92:9-11).

Mr. Harris' aunt, Ms. Sandra Wright, also testified that she was very close with him, having helped her mother raise him and his siblings while Ms. Perry was in prison and having maintained contact all his life (R92:14-15, 18). She was also familiar with both Mr. Harris' current charges and his prior problems with the law (R92:15).

Based upon her knowledge of Mr. Harris, Ms. Wright stated her opinion concerning his potential for rehabilitation. She explained that he is basically a good and compassionate person, but that he has acted out of rebellion due to a lack of self-identity. He does not know who his father is and has gone through life being teased because he is a mulatto. Ms. Wright concluded that "if Lawrence would have the proper counseling as far as self-identity and have some motivation to himself in finding out where he is at, I feel that Lawrence would be an asset to the society." (R92:15-16).

Ms. Wright further testified that Mr. Harris had previously shown initiative to try to better himself (R92:16), that he was working part-time prior to his arrest, and that he had a history of working:

> Lawrence has worked as a kid. Lawrence would work before he had a work per-

> mit. Lawrence would go out and shovel snow constantly. He couldn't wait until it snowed so he could shovel snow. I have known Lawrence to go to the Arena and shine shoes. Lawrence has worked before he was old enough to get a permit.

(R92:17).

The issue of Mr. Harris' alleged minimization of his involvement in the Daniels beating is discussed supra at §II.A. Mr. Harris also testified that, prior to his arrest in January, 1991, he was working part-time at Anthony's Construction Company in Milwaukee, doing light construction work and earning on average about $250 per week. This was enough for him to live on. Mr. Harris never told the presentence author that his girlfriend was supporting him or that he committed one of the crimes because he could not find a job. (R92:23-24).

The information and perspective provided by Mr. Harris' grandmother and aunt concerning his prior employment and attempts at rehabilitation which had been aborted by his mother, which information was omitted, misstated or misinterpreted by the presentence author, indicates a much higher potential for rehabilitation on the part of Mr. Harris than that suggested by the presentence report and relied upon by the court. This higher potential for rehabilitation in turn affects the accuracy of the sentencing court's assumptions concerning the degree of danger to the public presented by Mr. Harris.

This information clearly satisfies the requirements of a "new factor." The defendant recognizes, of course, that "[c]hanges in attitude and prison rehabilitation are not new factors justifying sentence modification." State v. Prince, 147 Wis. 2d 134, 432 N.W.2d 646, 647 (Ct. App. 1988). This case, however, does not involve such post-sentencing conduct.

Rather, Mr. Harris relies upon the fact that the trial court's assessment of a defendant's potential for rehabilitation, a factor of no little significance to that court's sentence of Mr. Harris, is highly relevant to the imposition of sentence. See, e.g., id. The defendant's potential for rehabilitation "provides information about his or her character and the need for protection of the public." Comment, Sentence Modification By Wisconsin Trial Courts, 1985 Wis. L. Rev. 195, 214. As such, correction of a sentencing court's erroneous determination of the defendant's susceptibility to rehabilitation is a new factor which may justify modification of a given sentence. See State v. Sepulveda, 119 Wis. 2d 546, 350 N.W.2d 96, 103-04 (post-sentencing determination of untreatable nature of defendant's personality disorder a "new factor" which "entirely frustrated the judge's intent and circumvented the dual purposes of probation -- to rehabilitate the defendant, yet protect society"), reh'g denied, 120 Wis. 2d 231, 353 N.W.2d 790 (1984).

Clearly, the offenses for which Mr. Harris was convicted were serious and violent and called for a lengthy sentence. Indeed, even defense counsel recommended 23 years incarceration (R34:19-23), a lengthy sentence by any reasonable standard. But the information provided by Mr. Harris' grandmother and aunt, two of the people who know him best, demonstrates that Mr. Harris is a salvageable human being who does have the potential for rehabilitation, not the inherently and irredeemably evil and violent person whom the trial court believed it was sentencing last August.

Because this information was unknown to the court at the time of sentencing, and because it clearly is highly relevant to sentencing, that information constitutes a new factor under Rosado. See Sepulveda, supra. Moreover, because his potential for rehabilitation goes to the very heart of the trial court's sentencing of Mr. Harris, he respectfully submits that this new factor justifies a substantial reduction in his sentence. Indeed, the defendant's potential for rehabilitation relates directly to two of the three mandatory sentencing criteria which must be considered by the court, the defendant's rehabilitative needs and the need to protect the public. These, as well as the gravity of the offense, must be weighed in the court's sentencing calculus to reach the ultimate sentence, which must be "the minimum amount of

custody or confinement which is consistent with" those three principal considerations. McCleary v. State, 49 Wis. 2d 263, 182 N.W.2d 512, 519 (1971) (citation omitted). Such major correction of two of the three factors involved cannot reasonably help but affect the ultimate result.

The trial court did not reach this second, discretionary phase of the new factor analysis. Rather, that court specifically stated that:

> This is not a resentencing; and that does not occur unless the court grants the motion, so the issue is whether or not the defense has established a new factor which would justify a right to resentencing... . I am not going to find the defendant has shown a new factor which justifies any modification of the sentence; and, therefore, the motion is denied."

(R92:32, 38).

Because the determination of whether the defendant has shown a new factor is a question of law reviewed without deference to the trial court, Hegwood, 335 N.W.2d at 401, and because the defendant clearly demonstrated such a new factor, this case should be remanded for resentencing.

CONCLUSION

For the reasons set forth in Section I, the defendant respectfully asks that the Court reverse the es-

cape related convictions and remand with directions to dismiss those charges for lack of jurisdiction. For the reasons set forth in Section II, the defendant asks that the Court vacate the sentences previously imposed upon Mr. Harris in all four cases and remand those cases for resentencing.

Dated at Milwaukee, Wisconsin, July 7, 1992.

Respectfully submitted,

LAWRENCE HARRIS
Defendant-Appellant

SHELLOW, SHELLOW & GLYNN, S.C.

Robert R. Henak
Robert R. Henak

P.O. ADDRESS:

222 East Mason Street
Milwaukee, Wisconsin 53202
(414) 271-8535

9553P

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 92-0828-CR,
92-0829-CR, 92-0830-CR,
& 92-0831-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LAWRENCE HARRIS,

Defendant-Appellant.

APPENDIX OF APPELLANT

WISCONSIN CIRCUIT BRANCH # 23CR MILWAUKEE COUNTY

State of Wisconsin, Plaintiff

-vs-

HARRIS, LAWRENCE, Defendant

03-15-70
Defendant's Date of Birth

JUDGMENT OF CONVICTION

[XX] Sentence to Wisconsin State Prisons

[ ] Sentence Withheld, Probation Ordered

[ ] Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER F-910183

The defendant entered plea(s) of: [ ] Guilty [ ] Not Guilty [XX] [redacted] ALFORD TYPE

The [XX] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
Attempt First Degree Intentional Homicide	940.01(1) 939.32 939.05	F		10-27-90

The defendant is convicted on 03-29-91 day of _____ 19 ___.

The defendant is sentenced on 08-01-91 day of _____ 19 ___.

IT IS ADJUDGED that the defendant is convicted as found guilty, and:

[XX] is sentenced to the Wis. prison for Fifteen (15) years, credit for 199 days.

[ ] is placed on probation for _____.

[ ] is to be incarcerated in the County Jail:

period of _____

and

[ ] is to pay:

fine of ..... $ _____

court costs of ..... _____

attorney fees of ..... _____

restitution of ..... _____

TOTAL $ _____

[XX] is to pay mandatory victim/witness surcharge(s):

felony 1 counts ..... $ 50.00

misdemeanor ____ counts..... _____

TOTAL $ _____

[ ] is granted work/study release privileges.

[ ] other:

IT IS ADJUDGED that -199- days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of WAUPUN, County of Dodge.

BY THE COURT:

NAME OF JUDGE: Janine P. Geske

DISTRICT ATTORNEY: Mark Williams

DEFENSE ATTORNEY: Thomas Erickson

Circuit Court Judge/Clerk/Deputy Clerk

uguast 01, 1991
Date Signed

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. F-910183

LAWRENCE HARRIS,

Defendant.

ORDER

For the reasons stated on the record on March 19, 1992, the defendant's motion for post-conviction relief seeking modification of his sentence is DENIED.

Dated: March 19, 1992

BY THE COURT:

Janine P. Geske
Circuit Court Judge

9280P

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

WISCONSIN | CIRCUIT BRANCH # 23CR | MILWAUKEE COUNTY

State of Wisconsin, Plaintiff

-vs-

HARRIS, LAWRENCE NMI, Defendant

03-15-70
Defendant's Date of Birth

JUDGMENT OF CONVICTION

[XX] Sentence to Wisconsin State Prisons

[ ] Sentence Withheld, Probation Ordered

[ ] Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER F-910206

The defendant entered plea(s) of: [XX] Guilty [ ] Not Guilty [ ] No Contest

The [XX] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
Armed Robbery (PTAC)	943.32(1)(b)&(2) 939.05	F	B	01-14-91

The defendant is convicted on 03-29-91 day of _____ 19 ___.

The defendant is sentenced on 08-01-91 day of _____ 19 ___.

IT IS ADJUDGED that the defendant is convicted as found guilty, and:

[XX] is sentenced to the Wis. prison for Twenty (20) years, consecutive to F-910209.

[ ] is placed on probation for _____,

[ ] is to be incarcerated in the County Jail:

period of _____

and

[ ] is to pay:

fine of ..... $ _____

court costs of ..... _____

attorney fees of ..... _____

restitution of ..... _____

TOTAL $ _____

[XX] is to pay mandatory victim/witness surcharge(s):

felony 1 counts ..... $ 50.00

misdemeanor ___ counts..... _____

TOTAL $ _____

[ ] is granted work/study release privileges.

[ ] other:

IT IS ADJUDGED that -0- days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of WAUPUN, County of Dodge.

BY THE COURT:

_____
Circuit Court Judge/Clerk/Deputy Clerk

NAME OF JUDGE: Janine P. Geske

DISTRICT ATTORNEY: Mark Williams

DEFENSE ATTORNEY: _

August 01, 1991
Date Signed

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. F-910206

LAWRENCE HARRIS,

Defendant.

ORDER

For the reasons stated on the record on March 19, 1992, the defendant's motion for post-conviction relief seeking modification of his sentence is DENIED.

Dated: March 19, 1992

BY THE COURT:

Janine P. Geske
Circuit Court Judge

9282P

CIRCUIT COURT MILWAUKEE CO. WIS. SEAL

WISCONSIN CIRCUIT BRANCH # 23CR MILWAUKEE COUNTY

State of Wisconsin, Plaintiff

-vs-

HARRIS, LAWRENCE , Defendant
03-15-70
Defendant's Date of Birth

JUDGMENT OF CONVICTION

[XX] Sentence to Wisconsin State Prisons

[ ] Sentence Withheld, Probation Ordered

[ ] Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER F-910209

The defendant entered plea(s) of: [XX] Guilty [ ] Not Guilty [ ] No Contest

The [XX] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
Armed Robbery	943.32(1)(b)&(2)	F	B	12-28-90

The defendant is convicted on 03-29-91 day of _____ 19 ___.
The defendant is sentenced on 08-01-91 day of _____ 19 ___.

IT IS ADJUDGED that the defendant is convicted as found guilty, and:

[XX] is sentenced to the Wis. prison for Twenty (20) years, consecutive to Ct. ,2 in F-910183.

[ ] is placed on probation for _____.

[ ] is to be incarcerated in the County Jail:
period of _____
and

[ ] is to pay:
fine of ..... $ _____
court costs of ..... _____
attorney fees of ..... _____
restitution of ..... _____
TOTAL $ _____

[X] is to pay mandatory victim/witness surcharge(s):
felony 1 counts ..... $ 50.00
misdemeanor ____ counts..... _____
TOTAL $ _____

[ ] is granted work/study release privileges.

[ ] other:

IT IS ADJUDGED that -0- days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of WAUPUN, County of Dodge.

NAME OF JUDGE
Janine P. Geske

DISTRICT ATTORNEY
Mark Williams

DEFENSE ATTORNEY

BY THE COURT:

Circuit Court Judge/Clerk/Deputy Clerk

August 01, 1991

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. F-910209

LAWRENCE HARRIS,

Defendant.

ORDER

For the reasons stated on the record on March 19, 1992, the defendant's motion for post-conviction relief seeking modification of his sentence is DENIED.

Dated: March 19, 1992

BY THE COURT:

Janine P. Geske
Circuit Court Judge

9283P

WISCONSIN CIRCUIT BRANCH # 23CR MILWAUKEE COUNTY

State of Wisconsin, Plaintiff

-vs-

HARRIS, LAWRENCE, Defendant

03-15-70
Defendant's Date of Birth

JUDGMENT OF CONVICTION

[XX] Sentence to Wisconsin State Prisons

[ ] Sentence Withheld, Probation Ordered

[ ] Sentence Imposed & Stayed, Probation Ordered

COURT CASE NUMBER F-911763

The defendant entered plea(s) of: [XX] Guilty [ ] Not Guilty [ ] No Contest

The [XX] Court [ ] Jury found the defendant guilty of the following crime(s):

CRIME(S)	WIS STATUTE(S) VIOLATED	FELONY OR MISDEMEANOR (F OR M)	CLASS (A-E)	DATE(S) CRIME COMMITTED
#1) Assault To Prisoner (PTAC)	946.43(2) 939.05	F	C	05-11-91
#2) Battery By Prisoner (PTAC)	940.20(1) 939.05	F	D	05-11-91
#3) Attempt To Escape (PTAC)	946.42(3)(a) 939.05	F	D	05-11-91

The defendant is convicted on 08-01-91 day of _____ 19 ___.
The defendant is sentenced on 08-01-91 day of _____ 19 ___.

IT IS ADJUDGED that the defendant is convicted as found guilty, and:

[XX] is sentenced to the Wis. prison for Ct. 1: Ten (10) years, consecutive to sentences imposed in F-910182, F-910206 & F-910209; Ct. 2: Five (5) years, consecutive to Ct. 1; Ct. 3: Two and one-half (2-1/2) years, consecutive to Ct. 2, and

[ ] is to pay:

fine of ..... $ _____
court costs of ..... _____
attorney fees of ..... _____
restitution of ..... _____
TOTAL $ _____

[XX] is to pay mandatory victim/witness surcharge(s):

felony 3 counts ..... $ 150.00
misdemeanor ___ counts..... _____
TOTAL $ _____

[ ] is granted work/study release privileges.

[ ] other:

IT IS ADJUDGED that -0- days sentence credit are due pursuant to s. 973.155 Wis. Stats. and shall be credited if on probation and it is revoked.

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department located in the City of WAUPUN, County of Dodge.

NAME OF JUDGE
Janine P. Geske
DISTRICT ATTORNEY
Mark Williams
DEFENSE ATTORNEY
Thomas Erickson

BY THE COURT:

Clerk of Court Judge/Clerk/Deputy Clerk

August 01, 1991
Date Signed

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. F-911763

LAWRENCE HARRIS,

Defendant.

ORDER

For the reasons stated on the record on March 19, 1992, the defendant's motion for post-conviction relief seeking modification of his sentence is DENIED.

Dated: March 19, 1992

BY THE COURT:

Janine P. Geske
Circuit Court Judge

9284P