



## Case Digest

By: Bill Tyroler\*

*\*Bill Tyroler has been with the SPD's Appellate Division since 1978. He obtained his law degree from the University of Wisconsin Law School in 1974 and a degree in sociology from the University of North Carolina-Chapel Hill in 1971.*

This Case Digest includes United States Supreme Court and Wisconsin appellate decisions released/published August 1, 2004 to January 14, 2005.

### UNITED STATES SUPREME COURT OPINIONS

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EFFECTIVE ASSISTANCE—CONCESSION OF GUILT AT CAPITAL TRIAL WHERE FOCUS WAS ON AVOIDING DEATH SENTENCE AT PENALTY PHASE APPROPRIATE STRATEGY, NOTWITHSTANDING ABSENCE OF CLIENT'S EXPRESS ASSENT, AT LEAST GIVEN OVERWHELMING EVIDENCE OF GUILT

*Florida v. Nixon*, <http://a257.g.akamaitech.net/7/257/2422/13dec20041215/www.supremecourtus.gov/opinions/04pdf/03-931.pdf> 03-931

THIRD-PARTY STANDING—COUNSEL DO NOT HAVE STANDING TO ASSERT, ON BEHALF OF HYPOTHETICAL CLIENTS, DENIAL OF RIGHTS UNDER STATUTORY SCHEME THAT SEVERELY RESTRICTS APPEAL FOLLOWING GUILTY PLEA

*Kowalski v. Tesmer*, <http://a257.g.akamaitech.net/7/257/2422/13dec20041215/www.supremecourtus.gov/opinions/04pdf/03-407.pdf> 03-407

#### FOURTH AMENDMENT

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*Devenpeck v. Alford*, <http://a257.g.akamaitech.net/7/257/2422/13dec20041215/www.supremecourtus.gov/opinions/04pdf/03-710.pdf> 03-710

## WISCONSIN SUPREME COURT AND COURT OF APPEALS OPINIONS

### APPELLATE PROCEDURE

INTERLOCUTORY APPEALS—ISSUES ARE LIMITED THOSE PRESENTED IN PETITION FOR LEAVE TO APPEAL

*State v. Henry W. Aufderhaar*, <http://www.wicourts.gov/html/ca/03/03-2820.htm> 2004 WI App 208, PFR filed 11/16/04

For Aufderhaar: J. Paul Neumeier Jr.; Raymond E. Krek

REVOCATION OF EXTENDED SUPERVISION—REVIEW IS COMMENCED BY SEEKING RELIEF UNDER § 809.30 FROM THE TRIAL COURT’S RECONFINEMENT ORDER; AND, BECAUSE “SENTENCING” ENCOMPASSES RECONFINEMENT, THE CONSIDERATIONS DISCUSSED IN *STATE v. GALLION*, 2004 WI 42, ARE PERTINENT

*State v. Christopher Swiams*, <http://www.wicourts.gov/ca/opinions/04/pdf/04-0299.pdf> 2004 WI App 217

For Swiams: Jefren E. Olsen, SPD, Madison Appellate

STANDARD OF REVIEW—CERTIORARI—MOTION TO QUASH “AKIN TO A MOTION TO DISMISS,” REVIEWED *DE NOVO*

*State ex rel. David C. Myers v. Swenson*, <http://www.courts.state.wi.us/html/ca/03/03-2406.htm> 2004 WI App 224, PFR filed 11/24/04

For Myers: Christopher T. Sundberg; Bruce D. Huibregtse

SUFFICIENCY OF EVIDENCE—WHERE A MOTION TO DISMISS IS MADE AT THE CLOSE OF THE PROSECUTIONS CASE BUT FOLLOWED BY PRESENTATION OF A DEFENSE, ON REVIEW OF SUFFICIENCY OF THE EVIDENCE SUPPORTING CONVICTION, THE APPELLATE COURT MUST EXAMINE ALL THE RECORD EVIDENCE

*State v. Eugene M. Perkins*, <http://www.courts.state.wi.us/ca/opinions/03/pdf/03-3296.pdf> 2004 WI App 213, PFR denied 12/15/04

For Perkins: Jeffrey W. Jensen

### COMMITMENTS

SEXUALLY VIOLENT PERSONS—POSTCONVICTION COLLATERAL ATTACK SERIAL LITIGATION BAR (*ESCALONA-NARANJO*) APPLIES TO AND CREATES PROCEDURAL BAR TO CHALLENGE TO CH. 980 COMMITMENT THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL OF THAT COMMITMENT

*State v. Thomas H. Bush*, <http://www.courts.state.wi.us/html/ca/03/03-2306.htm> 2004 WI App 193, PFR granted 12/15/04

For Bush: Robert G. LeBell

SEXUALLY VIOLENT PERSONS—SUPERVISED RELEASE PROCEDURE: APPOINTMENT OF EXPERT OF UNDER § 980.08(3) DOES NOT RELIEVE COURT OF OBLIGATION TO APPOINT EXAMINER UNDER § 980.08(4); HOWEVER, PETITIONER IS NOT ENTITLED TO EXPERT OF CHOICE

*State v. Dennis Thiel*, <http://www.courts.state.wi.us/html/ca/03/03-2649.htm> 2004 WI App 225  
For Thiel: Suzanne L. Hagopian, SPD, Madison Appellate

SEXUALLY VIOLENT PERSONS—SUPERVISED RELEASE PROCEDURE: APPOINTMENT OF EXPERT: TRIAL COURT MUST APPOINT AS EXPERT SOMEONE FAMILIAR WITH CRUCIAL INSTRUMENT, USED BY INSTITUTION IN PLACEMENT DETERMINATION, WHERE THAT INSTRUMENT'S SCORING THRESHOLD WAS REVISED DURING PENDENCY OF RELEASE PETITION

*State v. Dennis Thiel*, <http://www.courts.state.wi.us/html/ca/03/03-2649.htm> 2004 WI App 225  
For Thiel: Suzanne L. Hagopian, SPD, Madison Appellate

## COUNSEL

INEFFECTIVE ASSISTANCE—FAILURE TO OBJECT TO PLEA BARGAIN BREACH—REMEDY: TRIAL COURT HEARING TO DETERMINE WHETHER COUNSEL CONSULTED WITH CLIENT WITH RESPECT TO BREACH, AND IF SO WHETHER CLIENT AGREED TO OMITTED OBJECTION; IF NOT, DEFENDANT ENTITLED TO RESENTENCING BEFORE DIFFERENT JUDGE

*State v. Jesse Liukonen*, <http://www.courts.state.wi.us/html/ca/03/03-1539.htm> 2004 WI App 157  
For Liukonen: Russell L. Hanson

INEFFECTIVE ASSISTANCE—FAILURE TO RESEARCH APPLICABLE LAW AND OBJECT TO INADMISSIBLE EVIDENCE (PSR) IS DEFICIENT PERFORMANCE (BUT NOT PREJUDICIAL)

*State v. Jimmie R.R.*, <http://www.courts.state.wi.us/html/ca/02/02-1771.htm> 2004 WI App 168,  
*motion for reconsideration denied 9/15/04*  
For Jimmie R.R.: Martha K. Askins, SPD, Madison Appellate

## CONFESSIONS

DERIVATIVE EVIDENCE—DEFENDANT'S TESTIMONY IN RESPONSE TO STATEMENT VIOLATIVE OF 6<sup>TH</sup> AMENDMENT: TRIAL COURT ERRONEOUSLY EXERCISED DISCRETION, FOLLOWING *HARRISON-MIDDLETON* HEARING, IN CONCLUDING THAT TESTIMONY WAS NOT INDUCED BY ADMISSION OF ILLEGALLY OBTAINED STATEMENT

*State v. Christopher Anson*, <http://www.courts.state.wi.us/html/ca/03/03-1444.htm> 2004 WI App 155, (*AG's*) *PFR granted 12/15/04*  
For Anson: Larry Steen; Steven J. Watson

## CRIMES: OWI

SECOND OR SUBSEQUENT OFFENSE, PRIOR CONVICTION IN ANOTHER STATE: WISCONSIN LAW, NOT LAW OF THE FOREIGN STATE DETERMINES WHETHER THE DISPOSITION WILL BE DEEMED A "CONVICTION" UNDER § 343.307(1)(d) FOR PURPOSES OF ARRIVING AT CORRECT OWI CHARGE; IN THIS INSTANCE, PRIOR ILLINOIS CASE RESULTING IN "COURT SUPERVISION" IS DEEMED A "CONVICTION" WITHIN THE TRAFFIC CODE DEFINITION IN § 340.01(9r)

*State v. Arthur C. List*, <http://www.wicourts.gov/html/ca/03/03-3149.htm> 2004 WI App 230, *PFR filed 12/22/04*  
For List: Joseph L. Polito

**CRIMES: § 939.31, CONSPIRACY**

UNIT OF PROSECUTION—MULTIPLE CRIMES COMMITTED IN FURTHERANCE OF A SINGLE CONSPIRATORIAL OBJECTIVE SUPPORT MULTIPLE CHARGES.

*State v. Edward Leon Jackson*, <http://www.courts.state.wi.us/ca/opinions/03/pdf/03-2066.pdf> 2004 WI App 190, *PFR denied 11/18/04*

For Jackson: Meredith J. Ross, LAIP, UW Law School

**CRIMES: § 940.03 (1999-2000), FELONY MURDER**

FELONY MURDER IS A “STAND-ALONE” UNCLASSIFIED CRIME, RATHER THAN A PENALTY ENHANCER

*State v. Brandon L. Mason*, <http://www.courts.state.wi.us/html/ca/03/03-2693.htm> 2004 WI App 176  
For Dawson: Ellen Henak, SPD, Milwaukee Appellate

**CRIMES: § 940.225(2)(g), SEXUAL ASSAULT**

ELEMENTS: EMPLOYEE OF VA IN-PATIENT TREATMENT FACILITY NOT “EMPLOYEE” WITHIN § 940.295(2) / § 50.135(1)

*State v. John F. Powers*, <http://www.courts.state.wi.us/html/ca/03/03-1514.htm> 2004 WI App 156  
For Powers: Marcus J. Berghahn; John D. Hyland

**CRIMES: § 948.12(1m), POSSESSION OF CHILD PORNOGRAPHY**

SUFFICIENCY OF EVIDENCE, ELEMENT OF “POSSESSION” ESTABLISHED IMAGES WERE FOUND SAVED ON DEFENDANT’S COMPUTER HARD DRIVE, AND EXPERT TESTIFIED THAT THIS REQUIRED SOME MANIPULATION BY DEFENDANT

*State v. Jack P. Lindgren*, <http://www.courts.state.wi.us/html/ca/03/03-1869.htm> 2004 WI App 159, *PFR denied 10/19/04*

For Lindgren: Stephen M. Compton

**CRIMES: § 940.225(2)(c), SEXUAL ASSAULT, MENTALLY ILL VICTIM**

SUFFICIENCY OF EVIDENCE—EXPERT TESTIMONY IS NOT REQUIRED TO ESTABLISH THE ELEMENT OF THE VICTIM’S MENTAL ILLNESS, WHICH WAS SUPPORTED BY CREDIBLE LAY OPINION TESTIMONY; AND, GIVEN THE DEFENDANT’S DAILY INTERACTIONS WITH THE SEVERELY ALZHEIMER’S AFFLICTED VICTIM, THE EVIDENCE ALSO SUPPORTED THE ELEMENT OF HIS KNOWLEDGE OF HER INFIRMITY

*State v. Eugene M. Perkins*, <http://www.courts.state.wi.us/ca/opinions/03/pdf/03-3296.pdf> 2004 WI App 213, *PFR denied 12/15/04*

For Perkins: Jeffrey W. Jensen

**EVIDENCE**

(DEFENSE-PREPARED) PRESENTENCE REPORT: ADMISSIBLE AT TRIAL INVOLVING NEW CHARGE (PERJURY FOR LYING UNDER OATH AT THE TRIAL GIVING RISE TO THE D-PSR)

*State v. Jimmie R.R.*, <http://www.courts.state.wi.us/html/ca/02/02-1771.htm> 2004 WI App 168,  
*motion for reconsideration denied 9/15/04*  
For Jimmie R.R.: Martha K. Askins, SPD, Madison Appellate

(COURT-ORDERED) PRESENTENCE REPORT: INADMISSIBLE AT TRIAL INVOLVING NEW CHARGE, *STATE v. CROWELL*, 149 WIS. 2d 859, 440 N.W.2d 352 (1989) EXTENDED  
*State v. Jimmie R.R.*, <http://www.courts.state.wi.us/html/ca/02/02-1771.htm> 2004 WI App 168,  
*motion for reconsideration denied 9/15/04*  
For Jimmie R.R.: Martha K. Askins, SPD, Madison Appellate

HEARSAY—RESIDUAL EXCEPTION, § 908.03(24): VIDEOTAPED STATEMENTS OF CHILDREN ADMISSIBLE WITHOUT SATISFYING ALL REQUIREMENTS OF § 908.08  
*State v. Jimmie R.R.*, <http://www.courts.state.wi.us/html/ca/02/02-1771.htm> 2004 WI App 168,  
*motion for reconsideration denied 9/15/04*  
For Jimmie R.R.: Martha K. Askins, SPD, Madison Appellate

## **EXTRADITION & DETAINERS**

INTRASTATE DETAINER, § 971.11—SELF-EFFECTUATING, PERSONAL NATURE: DEFENDANT DOES NOT HAVE “AFFIRMATIVE RESPONSIBILITY” TO TELL COURT THAT REQUEST FOR PROMPT DISPOSITION HAS BEEN MADE; RATHER, “RESPONSIBILITY FOR PROMPT DISPOSITION IS PLACED SQUARELY ON THE DISTRICT ATTORNEY; NOR MAY DEFENSE COUNSEL WAIVE ENFORCEMENT OF THE REQUEST BY ACQUIESCING TO A SCHEDULED TRIAL DATE OUTSIDE THE TIME LIMIT  
*State v. Michael D. Lewis*, <http://www.wicourts.gov/html/ca/03/03-3191.htm> 2004 WI App 211  
For Lewis: Timothy A. Provis

## **GUILTY PLEAS**

PLEA BARGAINS—BREACH: BY PROSECUTOR—NEGATIVE ALLOCUTION: PROSECUTOR’S ALLOCUTION INDICATING THAT DEFENDANT GOT AN EXTREME BREAK, EVEN IF COURT WENT ALONG WITH PROPOSED SENTENCING RECOMMENDATION, VIOLATED PLEA BARGAIN BY “SUGGESTING HE NOW THOUGHT THE AGREEMENT WAS TOO LENIENT”  
*State v. Jesse Liukonen*, <http://www.courts.state.wi.us/html/ca/03/03-1539.htm> 2004 WI App 157  
For Liukonen: Russell L. Hanson

PLEA BARGAINS—VALIDITY: AGREEMENT TO REOPEN AND AMEND TO LESS SERIOUS OFFENSE UPON SUCCESSFUL COMPLETION OF PROBATION IS UNAUTHORIZED AND UNENFORCEABLE, AND THE PLEA ITSELF IS THEREFORE UNKNOWING AND INVOLUNTARY  
*State v. Anthony L. Dawson*, <http://www.courts.state.wi.us/html/ca/03/03-2116.htm> 2004 WI App 173  
For Dawson: William E. Schmaal, SPD, Madison Appellate

## JUVENILE DELINQUENCY

INITIAL WAIVER HEARING—SERVICE OF PETITION, § 938.273—PROSECUTOR REQUIRED TO EXERCISE REASONABLE DILIGENCE IN NOTIFYING JUVENILE THAT WAIVER PETITION HAS BEEN FILED; REQUIREMENT SATISFIED, AND JURISDICTION ATTACHED, WHEN PETITION MAILED TO JUVENILE

*State v. Henry W. Aufderhaar*, <http://www.wicourts.gov/html/ca/03/03-2820.htm> 2004 WI App 208, PFR filed 11/16/04

For Aufderhaar: J. Paul Neumeier Jr.; Raymond E. Krek

DELAY (OF 502 DAYS) IN PROSECUTING WAIVER PETITION DID NOT REQUIRE DISMISSAL, WHERE PROSECUTORIAL FAILURE TO LOCATE JUVENILE (WHO WAS OUT OF STATE) WAS NEGLIGENT BUT NOT A DELIBERATE ATTEMPT TO MANIPULATE THE SYSTEM

*State v. Henry W. Aufderhaar*, <http://www.wicourts.gov/html/ca/03/03-2820.htm> 2004 WI App 208, PFR filed 11/16/04

For Aufderhaar: J. Paul Neumeier Jr.; Raymond E. Krek

## OPEN RECORDS

SHERIFF AUTHORIZED TO RELEASE MATERIAL RELATED TO EMPLOYEE MISCONDUCT WHICH HAD BEEN INVESTIGATED AND DISCIPLINED, BUT GRIEVANCE PROCESS WAS STILL ON-GOING

*Local 2489 v. Rock County*, <http://www.wicourts.gov/html/ca/03/03-3101.htm> 2004 WI App 210

## PROBATION/PAROLE/PRISON

PLRA—ADMINISTRATIVE EXHAUSTION—INMATE’S FAILURE TO ASSERT IN COMPLAINT GOOD CAUSE FOR LATE-FILED ADMINISTRATIVE APPEAL WAIVED RIGHT TO MAKE “GOOD CAUSE” ARGUMENT

*State ex rel. Adrian Laurich v. Litscher*, <http://www.courts.state.wi.us/html/ca/02/02-2479.htm> 2004 WI App 150

PRISON ISSUES—PAROLE: LIBERTY INTEREST: DELIBERATELY DETAINING INMATE BEYOND MANDATORY RELEASE DATE VIOLATES 8<sup>TH</sup> AMENDMENT

*James Allen v. Guerrero, et al.*, <http://www.courts.state.wi.us/ca/opinions/03/pdf/03-1356.pdf> 2004 WI App 188

For Allen: Jeff Scott Olson

PRISON ISSUES—DISCIPLINE IMPOSED ON OUT-OF-STATE INMATE—JUDICIAL REVIEW BY WISCONSIN COURT: BURDEN ON INMATE TO SHOW FOREIGN STATE LACKED JURISDICTION TO ENGAGE IN JUDICIAL REVIEW

*State ex rel. David C. Myers v. Swenson*, <http://www.courts.state.wi.us/html/ca/03/03-2406.htm> 2004 WI App 224, PFR filed 11/24/04

For Myers: Christopher T. Sundberg; Bruce D. Huibregtse

(Same effect: *State ex rel. Tommy Ponchik v. Bradley*, <http://www.courts.state.wi.us/html/ca/03/03-2958.htm> 2004 WI App 226, PFR filed 12/3/04)

## SEARCH & SEIZURE

CONSENT—SCOPE: DEFENDANT’S LIMITING POLICE AUTHORITY TO SEARCH ONLY IN HIS PRESENCE DID NOT LIMIT POLICE AUTHORITY TO QUESTION HIS YOUNG CHILD OUTSIDE HIS PRESENCE, AND TO THEN TAKE EMERGENCY-DOCTRINE ACTION IN LIGHT OF THE RESPONSES

*State v. Robert A. Ragsdale*, <http://www.courts.state.wi.us/html/ca/03/03-2795.htm> 2004 WI App 178, *PFR denied 10/19/04*  
For Ragsdale: Timothy T. Kay

STOP/ SEARCH OF VEHICLE—BASIS: ANONYMOUS TIP PROVIDED SUFFICIENT PREDICTIVE INFORMATION, WHOSE DETAILS WERE CORROBORATED BY POLICE OBSERVATION, TO SUPPORT BOTH STOPPING AND SEARCHING CAR

*State v. Tabitha A. Sherry*, <http://www.wicourts.gov/html/ca/03/03-1531.htm> 2004 WI App 207, *PFR denied 12/15/04*  
For Sherry: Craig R. Day

STOP—BASIS—TEST: FAILURE TO YIELD TO AUTHORITY – SEIZURE OF PERSON DOES NOT OCCUR UNLESS AND UNTIL PERSON SUBMITS TO SHOW OF POLICE AUTHORITY (*CALIFORNIA v. HODARI D.*, 499 U.S. 621 (1991) FOLLOWED, ALBEIT WITH MISGIVINGS)

*State v. Charles E. Young*, <http://www.courts.state.wi.us/html/ca/03/03-2968.htm> 2004 WI App 227, *PFR filed 12/15/04*  
For Young: Martha K. Askins, SPD, Madison Appellate

SEARCH INCIDENT TO ARREST—IMPLIED CONSENT LAW: §§ 343.305(4) & (5) PERMIT DRIVER TO REQUEST TEST IN *ADDITION* NOT *INSTEAD* OF “PRIMARY” TEST; THOUGH THERE IS NO “TIMING REQUIREMENT” FOR SUCH REQUEST, DRIVER’S REPEATED REQUEST FOR BREATHALYZER *RATHER THAN* BLOOD TEST WAS THEREFORE INEFFECTIVE TO TRIGGER HIS RIGHT TO AN ADDITIONAL TEST

*State v. James A. Schmidt*, <http://www.courts.state.wi.us/html/ca/04/04-0904.htm> 2004 WI App 235  
For Schmidt: Daniel S. Diehn

SEARCH INCIDENT TO ARREST—WARRANTLESS BLOOD TEST, NON-DRUNK-DRIVING OFFENSE, AUTHORIZED IF POLICE HAVE REASONABLE SUSPICION BLOOD CONTAINS EVIDENCE OF CRIME

*State v. Christopher M. Repenshek*, <http://www.courts.state.wi.us/html/ca/03/03-3089.htm> 2004 WI App 229, *PFR filed 12/17/04*  
For Repenshek: Stephen E. Mays

SEARCH INCIDENT TO ARREST—DRUNK-DRIVING: REFUSAL TO SUBMIT TO PRELIMINARY BREATH TEST, § 343.303, MAY PROVIDE REASONABLE SUSPICION FOR BLOOD DRAW

*State v. Christopher M. Repenshek*, <http://www.courts.state.wi.us/html/ca/03/03-3089.htm> 2004 WI App 229, *PFR filed 12/17/04*  
For Repenshek: Stephen E. Mays

SEARCH WARRANT— CHILD PORNOGRAPHY: PROBABLE CAUSE ESTABLISHED BY ALLEGATIONS OF 15-YEAR OLD THAT DEFENDANT HAD TAKEN NUDE PHOTOS, COUPLED WITH LIST PURPORTING TO SHOW “COMMON HABITS” AND “CHARACTERISTICS” OF “CHILD MOLESTERS”

*State v. Jack P. Lindgren*, <http://www.courts.state.wi.us/html/ca/03/03-1869.htm> 2004 WI App 159, PFR denied 10/19/04

For Lindgren: Stephen M. Compton

## SENTENCING

INCARCERATION-RELEASE PROGRAMS—§ 973.01(3g), EARLY RELEASE PROGRAM (ERP): SENTENCING COURT EXERCISING DISCRETION ON ERP HAS AUTHORITY TO DETERMINE NOT ONLY WHETHER BUT WHEN DEFENDANT IS ELIGIBLE FOR PROGRAM; LANGUAGE AND PURPOSE OF ERP STATUTE IS “ALMOST IDENTICAL” TO THAT FOR BOOT CAMP, § 973.01(3m)

*State v. Miyosha White*, <http://www.courts.state.wi.us/html/ca/04/04-1211.htm> 2004 WI App 237, PFR filed 12/1/04

For White: Leonard Kachinsky

MIRANDA-RELATED SAFEGUARDS, PRE-SENTENCE REPORT: BECAUSE THE PRESENTENCE INVESTIGATION IS NOT PART OF THE ACCUSATORY STAGE, MIRANDA-TYPE RIGHTS DO NOT ATTACH

*State v. Jimmie R.R.*, <http://www.courts.state.wi.us/html/ca/02/02-1771.htm> 2004 WI App 168, motion for reconsideration denied 9/15/04

For Jimmie R.R.: Martha K. Askins, SPD, Madison Appellate

MODIFICATION / REVIEW—WEIGHT ASSIGNED TO RELEVANT FACTORS IS DELEGATED TO “WIDE DISCRETION OF THE SENTENCING JUDGE,” *STATE v. GALLION*, 2004 WI 42, “DOES NOT MAKE ANY MOMENTOUS CHANGES”—CHALLENGE TO SENTENCE BASED ON DEFENDANT’S ELDERLY AGE AND LIKELIHOOD OF NOT SURVIVING CONFINEMENT REJECTED

*State v. Wallace I. Stenzel*, <http://www.courts.state.wi.us/html/ca/03/03-2974.htm> 2004 WI App 181

For Stenzel: Martin E. Kohler

PERSISTENT REPEATER, § 939.62(2m)(b)2—LIFE SENTENCE WITHOUT POSSIBILITY OF PAROLE NOT CRUEL AND UNUSUAL PUNISHMENT

*State v. Michael D. Lewis*, <http://www.wicourts.gov/html/ca/03/03-3191.htm> 2004 WI App 211

For Lewis: Timothy A. Provis

RESENTENCING—ILLEGAL SENTENCE, TIS: MAXIMUM TERM OF INITIAL CONFINEMENT EXCEEDED, REMEDY IS RESENTENCING

*State v. Brandon L. Mason*, <http://www.courts.state.wi.us/html/ca/03/03-2693.htm> 2004 WI App 176

For Dawson: Ellen Henak, SPD, Milwaukee Appellate

SURCHARGE, § 973.046, FOR DNA COLLECTION, § 973.047—NOTWITHSTANDING FACT THAT SAMPLE HAD ALREADY BEEN COLLECTED FROM DEFENDANT IN PRIOR CASE SO THAT ADDITIONAL SAMPLE WOULD NOT IN FACT BE COLLECTED, SURCHARGE MAY NONETHELESS BE ORDERED IN CURRENT CASE

*State v. Franciollo L. Jones*, <http://www.wicourts.gov/html/ca/03/03-3245.htm> 2004 WI App 212, PFR filed 11/11/04

For Jones: Syovata Edari; Ellen Henak (on PFR), SPD, Milwaukee Appellate

(Note: See discussion, <http://www.wisspd.org/html/980case/casesum/sentencing.htm#DNA> , re: issues left unresolved.)