

## **Offender's rights ruled violated**

### **Probation revocation reversed for man who refused to admit crimes**

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A convicted sex offender can detail his or her crimes while in treatment and, as long as the case is on appeal, those statements can never be used against the offender, the state Supreme Court ruled Thursday in a Washington County case.

The unanimous ruling came just six weeks after oral arguments in the case of Gary Tate, a 47-year-old West Bend man who has spent four years in prison after his probation was revoked for refusing to admit he sexually assaulted a 10-year-old girl.

Tate maintained his innocence throughout his trial but was convicted of three counts of repeated sexual assault of the same child. He was sentenced to 25 years in prison, but that was stayed in favor of 20 years of probation.

He appealed his conviction, but Washington County Circuit Judge Annette Ziegler refused to allow Tate a new trial. In the meantime, he was undergoing sex offender treatment as a condition of his probation.

He was terminated from treatment because he would not admit to the sexual assault. He petitioned the court to change the terms of his probation by eliminating the need for treatment. That request was denied by Judge Leo Schlaefel.

Because Tate was no longer in treatment, he was deemed non-compliant with the terms of his probation, and it was revoked.

Tate appealed the case, and that led to the 7-0 opinion issued Thursday.

Justice Diane Sykes said Tate's Fifth Amendment right against self-incrimination was violated by the probation revocation.

"Future criminal proceedings were possible in his case, as well as the potential for a perjury prosecution arising out of his trial testimony," she wrote. "The price of remaining silent was probation revocation."

Sykes went on to note that the Department of Corrections now agreed Tate's revocation was premised on a legitimate assertion of his Fifth Amendment privilege against self-

incrimination.

The ruling calls for Tate's revocation be reversed, and it remands the case to the Circuit Court for further action.