

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 5, 2014**

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. 2011AP1997-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2009CF113

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL B. BUCHANAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Wood County:  
JAMES M. MASON, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. Michael Buchanan appeals a judgment of conviction. The issue is whether the circuit court erred by denying his presentence motion to strike parts of the presentence investigation report. We conclude it did not. We affirm.

¶2 Buchanan pled no contest to one count of first-degree sexual assault of a child and one count of child enticement. Before sentencing, he moved to strike certain portions of the presentence investigation (PSI) report. The motion identified ten separately listed portions of the report that he sought to strike. At sentencing, the court granted some of those requests, but denied others. Buchanan did not file a postconviction motion. Accordingly, the only decisions before us for review are those the circuit court made at sentencing in denying portions of Buchanan’s motion to strike.

¶3 Buchanan argues that the court erred by not striking those portions and by accepting them as true. However, Buchanan did not ask, either before or at sentencing, for an evidentiary hearing to attempt to disprove that material. Nor did he otherwise attempt to present evidence to disprove the portions he disputed.

¶4 Buchanan appears to argue that the court was required to order such a hearing on its own initiative once he disputed that material, but he cites no convincing authority for that proposition. He relies on *State v. Anderson*, 222 Wis. 2d 403, 412, 588 N.W.2d 75 (Ct. App. 1998), for the proposition that the court has an important fact-finding role to perform if relevant facts are disputed at sentencing. However, nothing in *Anderson* places the burden on the court to initiate a hearing. On the contrary, other passages in *Anderson* note that it was “trial counsel’s further duty to see that the accuracy of those [PSI] matters was fully resolved by a proper hearing,” *id.* at 410, and that Anderson was prejudiced by “[t]rial counsel’s failure to pursue this matter by fully litigating the accuracy of those allegations,” *id.* at 411.

¶5 Buchanan asserts that he is not required to disprove the PSI report assertions that he disagrees with. In support he cites *State v. Hubert*, 181 Wis. 2d

333, 345, 510 N.W.2d 799 (Ct. App. 1993). There, we declined to set a specific burden of proof regarding “other acts” relevant to sentencing, and instead we regarded the use of such material as a matter of discretion. *Id.* While Buchanan may be correct that he is not required to disprove the disputed PSI portions, under *Hubert* neither is the State or circuit court required to *prove* them. Instead, the issue is left to the discretion of the court.

¶6 Thus, under Buchanan’s framing of the issue, the remaining question is whether the circuit court erroneously exercised its discretion, based on the limited record that was available to the court at the time of sentencing. We conclude it did not.

¶7 As to the reported telephone statements by Buchanan from jail, the only basis he offered for the court to strike them was that his attorney had not heard the statements in question in the recordings she was provided, and which were supposed to contain those statements. However, Buchanan could have placed those recordings in evidence for the court to listen to, or provided a transcript to the court, but he did not. With Buchanan making no attempt to provide the court with available evidence on the point, the court could reasonably disregard counsel’s assertion and accept the version described in the PSI report.

¶8 Buchanan asserts that certain material in the PSI report should not have been there if the agent had properly followed administrative rules regarding sources of information for preparing PSI reports. More specifically, he argues that portions of the report discuss other possible criminal conduct described in reports by and interviews with other investigators and counselors, which involve multiple levels of hearsay. However, Buchanan does not present legal authority that the court is required to strike such material, even if it were true that the code

provisions were not followed. Furthermore, Buchanan did not attempt to disprove any of these allegations with evidence at sentencing. Accordingly, we conclude that the court did not erroneously exercise its discretion in declining to strike this material.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

