

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-0815

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALFRED J. SPEARS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Alfred Spears appeals from a judgment of conviction sentencing him after probation revocation. We affirm.

Following a no contest plea in February 1994, Spears was convicted of one count of issuing a worthless check. He was placed on probation for three years. In January 1997, his probation was extended by two years for failure to pay

restitution. Spears' probation was later revoked and he was sentenced in January 1998 to twenty-two months in prison. Spears did not file a postconviction motion, but appeals directly from that judgment of conviction.

Spears' first two arguments relate to the extension of his probation. Spears waived these arguments by not presenting them to the trial court first in a postconviction motion. *See State v. Monje*, 109 Wis.2d 138, 153-53a, 327 N.W.2d 641, 641 (1982) (on motion for reconsideration). It is also questionable whether a probation extension can be raised in an appeal from a later judgment of conviction. *See State v. Drake*, 184 Wis.2d 396, 515 N.W.2d 923 (Ct. App. 1994) (sentencing after revocation does not bring before us the original judgment of conviction).

Spears appeared pro se at the most recent sentencing hearing. His next argument is that he was unable to properly represent himself because he was handcuffed and chained, which prevented him from taking notes about the prosecutor's arguments or referring to documents. Spears made two references to this difficulty during sentencing. Even if we assume these comments were sufficient to preserve the issue for our review, we see no reversible error. First, there is no indication that Spears asked to be released from the restraints before the proceedings began. Second, Spears was still able to present a sentencing argument that covered approximately nine pages of transcript. Although he claims that he was unable to access documents to respond to a question by the court, he did not so advise the court at that time. Finally, he also argues that his appearance in restraints gave the judge a "negative perception." It is not clear what kind of additional negative perception could have been conveyed, since at that point the judge already knew Spears was a convicted felon appearing for sentencing.

Spears next argues that in sentencing for this offense, the court erroneously considered the offenses that caused revocation of his probation. This argument was waived by Spears' failure to request reconsideration of his sentence in a postconviction motion. *See State v. Hayes*, 167 Wis.2d 423, 425, 481 N.W.2d 699, 700 (Ct. App. 1992).

Spears argues that the court erred by not promptly scheduling hearings on two letters he sent to the court before sentencing. The letters are not in the appellate record. Spears describes them as requests for a speedy trial, bond hearing and dismissal of his attorney. It is unclear how the lack of a hearing on these items could have affected Spears' sentence.

Finally, Spears argues that he was not given sentence credit for time spent on electronic monitoring. This issue has not been raised in the trial court first, and therefore is waived. Spears may still be able to raise this issue by following the procedure provided in § 973.155(5), STATS.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

