

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 21, 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. 98-1783

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDY W. LARSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
EDWIN C. DAHLBERG, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

PER CURIAM. Randy W. Larson appeals from an order denying his motion for sentence modification. Larson claims that his sentence was improperly enhanced based upon his status as a repeat offender, but we conclude that he has waived this issue. We therefore affirm.

On November 17, 1993, in exchange for the dismissal or reduction of other charges, Larson pleaded guilty to one count of first-degree reckless injury, one count of burglary, one count of criminal damage to property and one count of recklessly endangering safety, all as a repeat offender. Larson stipulated that the allegations in the complaint established a factual basis for his plea. In addition to outlining how Larson had dragged a police officer under his car after the officer interrupted Larson's burglary of a school, the complaint stated that Larson had been convicted of three misdemeanor offenses (two disorderly conducts and one possession of marijuana) within the preceding five years.

On April 22, 1994, Larson filed a postconviction motion under § 809.30, STATS., challenging the enhancement of his sentence as a repeat offender as unconstitutional. However, after being advised that the granting of his motion would void the entire plea agreement and possibly result in additional charges, Larson withdrew the motion.

On April 20, 1998, Larson filed a motion for postconviction relief under § 974.06, STATS., again raising the repeat offender issue. The trial court denied the motion as procedurally barred and refused to reconsider its decision. It is the order denying reconsideration from which Larson now appeals.

Section 974.06(4), STATS., provides that any ground for relief which was knowingly, voluntarily and intelligently waived in any other proceeding taken to secure relief cannot be raised in a subsequent motion unless the court finds a sufficient reason why the ground was not previously asserted. We agree with the trial court that Larson knowingly, voluntarily, and intelligently waived his objection to his repeat offender status when he withdrew his § 809.30 motion. We further agree that Larson lacked a sufficient reason why the ground was not

previously asserted. While his assertion that he lacked effective assistance of trial counsel might explain why he initially admitted the factual basis for the plea, it does not excuse his postconviction waiver, made with the assistance of appellate counsel.

By the Court.—Order affirmed.

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

