

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 13, 2000

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2601-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DOUGLAS M. WILBER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Douglas Wilber appeals a judgment sentencing him to four years in prison and an order denying his postconviction motion. He argues that the circuit court improperly based its sentencing decision on an inaccurate, incomplete and nonobjective Presentence Investigation Report (PSI)

that should have been removed and that the sentences are excessive. We reject these arguments and affirm the judgment and order.

¶2 Pursuant to a plea agreement, Wilber pled guilty and no contest respectively to charges of failing to give information or render aid following an accident resulting in great bodily harm and operating a motor vehicle without the owner's consent. Charges of causing great bodily harm by intoxicated use of a vehicle and a bail jumping charge were dismissed and read in. Under the terms of the agreement, the State was free to argue for any appropriate sentence, but would only recommend prison if the PSI recommended it. The PSI recommended a prison sentence and Wilber presented an alternative PSI. He requested that the initial PSI be removed because it was incomplete, inaccurate and done in haste. The trial court denied the motion. At the sentencing hearing, Wilber corrected some of the errors contained in the initial PSI and presented testimony supporting the second PSI. The court nevertheless found the initial PSI reliable, objective, accurate, and any mistakes insignificant. It then sentenced Wilber to two consecutive two-year terms.

¶3 The trial court properly considered the initial PSI. Wilber cites no authority to support his contention that removing an erroneous PSI is required when it is inaccurate, incomplete or when the agent fails to comply with the guidelines for preparing a PSI. Rather, the remedy was to afford Wilber an opportunity to examine the contents of the report, challenge statements, correct errors and present his own PSI. *See State v. Watson*, 227 Wis. 2d 167, 193-94, 595 N.W.2d 403 (1999). The trial court employed the correct procedures for determining the facts relevant to sentencing.

¶4 A defendant has the right to be sentenced on the basis of accurate information. *See State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). Wilber has not established any due process violation arising out of the trial court's consideration of the initial PSI. Wilber argues that the initial PSI inaccurately reported that Wilber's mother was not aware of his emotional problems before the accident. His mother testified that she had taken Wilber to see doctors for depression and anxiety. The trial court found that the initial PSI was not "so far off base as to be misleading or a significant mistake," noting that Wilber never made another appointment to deal with his depression until after the accident. Based on all of the evidence, the court found that alcohol usage, not emotional problems, debilitated Wilber. As the arbiter of the witnesses' credibility and the weight to be accorded their testimony, the court reasonably rejected biased assertions by Wilber, his family and friends. *See Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶5 Wilber faults the initial PSI because the agent did not contact his ex-wife and siblings or follow up on his psychological and medical conditions. To the extent any of those matters were relevant, Wilber had the opportunity to present that evidence. Wilber argues that the PSI failed to relate that he cried during the interview. He contends that crying shows remorse and should have been included. Again, this information was provided to the trial court. Whether crying during the interview reflected self-pity or empathy for the victim and whether crying is relevant to the sentencing decision are matters for the trial court to resolve. Wilber argues that the defects in the initial PSI display the author's bias. The author hurried through the process because he was about to retire. The resulting omissions and minor inaccuracies, however, do not reflect nonobjectivity or bias.

¶6 The trial court considered appropriate factors when imposing the consecutive two-year sentences, and they are not so excessive as to shock public sentiment. *See State v. Thompson*, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992). The court focused on the gravity of the offenses. After drinking heavily, Wilber left the bar in a vehicle that had been entrusted to his repair shop. Within a matter of minutes, he struck a motorcycle, seriously injuring the driver. He fled the accident scene not knowing whether the victim was dead or alive.

¶7 The court also considered Wilber's character. While he submitted numerous letters from family and friends attesting to his good character, the court noted that the letters documented Wilber's increasing alcohol abuse. His dishonesty in using a vehicle entrusted to his repair shop, his fleeing the area in an effort to avoid responsibility for the accident and his continued drinking in violation of the conditions of his bail reflect badly on his character.

¶8 The court also specifically considered the need to protect the public based on Wilber's failure to continue with treatment before the accident and the violation of the condition of his bond. The court considered no improper factors and Wilber has not established any basis for this court to overturn the trial court's discretionary, presumptively reasonable sentencing decision. *See State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984).

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (1997-98).

