

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 30, 2001

Cornelia G. Clark
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.

**Nos. 00-2552-CR
00-2553-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LUCAS A. APPLEBEE,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Crawford County:
MICHAEL KIRCHMAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lucas Applebee appeals from judgments convicting him of one count of possession of THC with intent to deliver and one count of criminal damage to property. The issues are: (1) whether Applebee's confession was voluntary; and (2) whether the trial court misused its discretion in sentencing Applebee. We affirm.

¶2 Applebee was detained and searched after a search warrant was executed at Andrew and Julie Meyer's residence. The police found a plastic baggie of marijuana. The police interrogated Applebee twice, immediately after he was detained while he was sitting in the squad car outside the residence, and the next day in the jail. Applebee told the police he had also been involved in an incident at North Crawford High School during which approximately \$845 worth of damage had been done to the school. Applebee was convicted after pleading guilty and sentenced to four years of probation for possession of marijuana with intent to deliver, with six months in jail as a condition of probation. He was also sentenced to two years of probation, to run concurrently, for the criminal damage to property charge, with six months in jail as a condition of probation to run consecutively with the controlled substance jail term.

¶3 Applebee first argues that his statement to police should have been suppressed because it was involuntary. The flaw in Applebee's argument is that it is based primarily on his contention that he was a minor when he was questioned and should have had a parent present during the questioning. Although Applebee was seventeen years old at the time, he was not a child under the law. WISCONSIN STAT. § 938.02(1) (1999-2000)¹ (emphasis added) defines adult as "a person who is 18 years of age or older, *except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance*, 'adult' means a person who has attained 17 years of age." Applebee was not entitled to have his parent present during questioning. He was informed of his rights, as required by *Miranda v. Arizona*, 384 U.S. 436

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

(1966), but decided to waive them. Therefore, we conclude that the confession was voluntary.

¶4 Applebee next contends that the trial court misused its discretion in sentencing him because the sentence is too harsh. A sentence is too harsh if it shocks public sentiment and violates the judgment of reasonable people concerning what is right and proper under the circumstances. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983). The trial court explained that it was imposing probation with “tough” conditions based primarily on Applebee’s character and attitude. The court pointed to a number of statements made by Applebee as evidence of the fact that he was “deeply into the drug culture” and showed “no intent to change [his] ways, no change of thinking, no realization that it’s the drugs and the drug thinking that got you where you are.” Based on the record before us, we conclude that the trial court did not misuse its discretion in concluding that Applebee’s illegal conduct warranted a total of four years of probation, with one year in jail as a condition.

By the Court.—Judgments affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

