

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 31, 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.

No. 01-0105-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER M. MARCUS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Christopher Marcus appeals an order denying his motion to modify a five-year sentence imposed for escape. He argues that the sentencing court improperly exercised its discretion when it imposed the maximum sentence and that the sentence is so excessive and unusual as to shock public sentiment. He also argues that the Presentence Investigation Report was

incomplete and that he did not have sufficient time to review the PSI before sentencing. We reject these arguments and affirm the order.

¶2 Pursuant to a plea agreement, Marcus pled guilty to escape. The court imposed a five-year jail term, stayed the sentence and placed Marcus on probation for three years. Marcus violated the terms of his probation, was revoked and the five-year prison term went into effect.

¶3 Marcus's challenge to the length of the sentence is based on a mischaracterization of the sentence. He argues that imposing the maximum sentence is not appropriate for a nonviolent, victimless crime with no major aggravating circumstances, and mitigating circumstances arising from deaths in the family that preceded the escape. Marcus fails to acknowledge, however, that the court stayed the five-year sentence and placed him on probation. The court reasonably focused its attention on Marcus's character and formulated the sentence in a manner that would provide for minimal incarceration if this offense had been, as Marcus argues, an aberration based on stress. If the escape was the product of special circumstances and did not reflect Marcus's continuing pattern of criminal behavior, he could have passed his probationary period serving no more than the four-month's jail time imposed as a condition of probation. That sentencing structure for a man with numerous previous adjudications for delinquency, adult convictions for burglary, forgery, fraudulent use of financial transaction cards, resisting and obstructing officers and taking a vehicle without the owner's consent is not so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶4 Marcus was not denied his due process rights on the basis of an incomplete presentence investigation report. Marcus must show that the

information was inaccurate and that the court actually relied on inaccurate information. *See State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). He has not identified any inaccurate information upon which the presentence report or his sentence was based. Marcus was not interviewed by the PSI author because she could not locate him. Marcus did not ask to be interviewed for a presentence report before being sentenced. By his failure to make himself available for an interview or to ask for an interview before sentencing, Marcus waived his right to complain that the PSI did not include information from him. In addition, when given his right of allocution, he offered no relevant information. Marcus has not established any prejudice from the procedure that allowed him to directly inform the court of any mitigating circumstances rather than presenting them through the PSI.

¶5 Finally, Marcus has not established any due process violation or prejudice arising from the short time he had to review the PSI before sentencing. Marcus and his counsel made some corrections to the PSI at the sentencing hearing. He did not request additional time to review the PSI. He has not identified any fact relied upon by the sentencing court that is based on misinformation, or any misinformation that he would have corrected if he had examined the PSI in greater detail.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

