

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 1998

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.

**Nos. 96-3473-CR
96-3474-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CLARENCE E. PELTON,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Rock County:
J. RICHARD LONG, Judge. *Affirmed.*

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

PER CURIAM. Clarence E. Pelton appeals from a circuit court order sentencing him after revocation and from another order denying his

postconviction motion.¹ We affirm because it does not appear that the trial court materially relied upon incorrect information in sentencing Pelton.

BACKGROUND

Pelton was convicted of second degree sexual assault of a child, contrary to § 948.02, STATS., and felony bail jumping, contrary to § 946.49(1)(b), STATS. He was placed on two concurrent terms of probation. After his probation was revoked for failure to comply with the terms of probation,² he was sentenced on the underlying counts to concurrent terms of five and seven years' imprisonment. Pelton subsequently filed a postconviction motion for resentencing or sentence modification. The motion was denied. Pelton appeals, arguing that he has a constitutional right to be sentenced on the basis of true and correct information. See *Bruneau v. State*, 77 Wis.2d 166, 174-75, 252 N.W.2d 347, 351 (1977). He further alleges that the inaccurate data at his sentencing prejudiced him.

Pelton married on April 13, 1994. However, the sentencing court was presented evidence that he was married one year earlier, and the court specifically asked about the date of the marriage. Pelton finds this significant because he committed child sexual assault on or about July 2, 1993. Consequently, the error made it appear that he committed the assault while a newlywed, rather than while he was still single.

¹ Pelton also appeals from his underlying judgment of conviction. However, he offers no argument upon that issue, and we do not consider it further. See *Vesely v. Security First Nat'l Bank*, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1985).

² The matter of Pelton's probation revocation is considered in our decision of even date in Appeal No. 96-3311.

Although sentencing is within the circuit court's discretion, *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987), we have carefully reviewed the entire record *de novo* to rule out the possibility of error. We conclude that the sentencing court did not give any weight to Pelton's date of marriage, but mentioned it only as part of a general check of background facts before sentencing. We also conclude that the postconviction court did not err in denying the motion. Further, we independently conclude that the record does not support an inference that any error in Pelton's date of marriage penalized him. At the time of the original sentencing, the sentencing court withheld sentence and placed Pelton on probation. Nothing in the record indicates that the error in marriage dates prejudiced Pelton.

By the Court.—Orders affirmed.

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

