

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 23, 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.

No. 97-2379-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JEFFREY C. GILMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waupaca County: JOHN P. HOFFMANN, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Jeffrey Gilman appeals from a judgment of conviction and from an order denying his postconviction motion. He argues that the prosecution breached the plea agreement, but we conclude he waived that issue by not objecting at sentencing. We affirm.

Gilman pleaded no contest to a felony. He remained free on bond pending sentencing. Gilman left the state and did not appear for sentencing until after he was apprehended and returned to Wisconsin. Although the plea bargain originally called for the State to recommend no prison time, at sentencing the State argued for a twenty-year prison term, while Gilman's attorney argued for a five-year term.

Gilman argues that the State's sentencing argument was a breach of the plea agreement, and therefore he should be resentenced. The State argues that Gilman waived this issue at the sentencing hearing. Gilman did not file a reply brief, and therefore did not respond to the State's argument.

At the start of the sentencing hearing, Gilman's attorney stated: "Mr. Gilman and I discussed the fact that his leaving and having to be extradited from out of state pretty much relieved the [S]tate from the responsibility of following through with that plea agreement" She also stated that they had discussed the possibility of moving to withdraw the plea, but Gilman decided against it. Furthermore, Gilman's attorney recommended prison time. Based on this record, we conclude that Gilman waived any objection to the State's sentencing argument. See *State v. Smith*, 153 Wis.2d 739, 741, 451 N.W.2d 794, 795 (Ct. App. 1989) ("the right to object to an alleged breach of a plea agreement is waived when the defendant fails to object and proceeds to sentencing after the basis for the claim of error is known").

By the Court.—Judgment and order affirmed.

This opinion will not be published.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

