

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 25, 2001

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. 00-0265-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TOREA L. MITCHELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Vergeront, Deininger and Hue, JJ.¹

¹ Circuit Judge William F. Hue is sitting by special assignment pursuant to the Judicial Exchange Program.

¶1 PER CURIAM. Torea Mitchell appeals a judgment of conviction. The issue is whether the trial court properly denied his motion to suppress evidence. We conclude that it did. We affirm.

¶2 The circuit court denied Mitchell's motion without a hearing. After Mitchell filed the suppression motion, he also moved to extend the time to file that motion by approximately three weeks. The ground offered for the extension was that Mitchell's trial counsel had "screwed up." When the court took up the suppression motion, the State objected on the grounds that it was untimely and lacking in specificity. The court agreed that the motion was lacking sufficient specificity, and the court concluded its analysis by saying: "I don't think the motion is even sufficient on its face and I'm going to deny the motion on the grounds that it's insufficient on its face, and indicate that I believe that it's not excusable neglect for counsel to have a computer generated deadline and then just simply miss it."

¶3 On appeal, Mitchell argues that the court erred by denying the motion for lack of specificity. In response, the State argues that this denial was proper, and also that the motion was properly denied as untimely. In reply, Mitchell argues that the trial court did not deny the motion as untimely, and "did not act" on the timeliness argument. We disagree. The court clearly did act on the argument, and agreed with the State that the motion was untimely and that no excusable neglect had been shown. While the court's statement did not expressly tie that conclusion together with denial of the motion, we think the most reasonable reading of the sentence quoted above is that the trial court was denying the motion on both grounds.

¶4 Beyond that, Mitchell does not argue on appeal that the trial court applied an improper standard when deciding whether the motion was untimely or that excusable neglect was shown. Neither does he argue that the trial court reached an unreasonable result or otherwise erroneously exercised its discretion. Therefore, we do not address those issues. We also do not address whether the court erred by denying the suppression motion for lack of specificity.

By the Court.—Judgment affirmed.

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

