

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 19, 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. 00-2364

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIAM F. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

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

¶1 PER CURIAM. William Williams appeals from an order denying postconviction relief from a judgment convicting him of false imprisonment and substantial battery, both as a repeater. He was originally convicted on a plea and placed on probation in 1996. After the Department of Corrections revoked his

probation in 1998, the trial court sentenced him to consecutive four-year and three-year prison terms. He contends that the prosecutor violated the plea agreement when making sentencing arguments both before and after revocation, that the trial court relied on inaccurate sentencing information, and that the State failed to adequately prove his repeater status during the 1996 proceedings. We affirm.

¶2 Williams cannot now argue that the prosecutor breached the plea agreement during the post-revocation proceedings. A defendant who proceeds to sentencing without objecting to the alleged breach, as Williams did, cannot subsequently raise the issue in postconviction proceedings. *See State v. Merryfield*, 229 Wis. 2d 52, 64-65, 598 N.W.2d 251 (Ct. App. 1999). In any event, the plea agreement did not constrain the prosecutor at the second sentencing.

¶3 Williams has also waived his claim that the trial court sentenced him on erroneous information concerning his criminal record. When the prosecutor recited that information, Williams remained silent. Issues not timely raised in the trial court are waived. *Maclin v. State*, 92 Wis. 2d 323, 328-29, 284 N.W.2d 661 (1979). In any event, the alleged errors were trivial and did not contribute to the sentencing determination under any reasonable view.

¶4 Williams's remaining issues concern the pre-revocation proceedings. However, those issues were not raised by a timely appeal and we need not address them. *See State v. Drake*, 184 Wis. 2d 396, 397-99, 515 N.W.2d 923 (Ct. App. 1994). Moreover, these issues are without merit. The record shows that the prosecutor complied with the plea agreement at the first sentencing hearing and that Williams admitted his repeater status at his plea hearing.

By the Court.—Order affirmed.

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

