

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 16, 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. 01-0071-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DWAYNE O. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
DENNIS C. LUEBKE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Dwayne Jackson appeals an order denying his motion for resentencing. He argues that the trial court unreasonably drew an inference from his sporadic employment record that he supported himself by

selling drugs and that this inference created a risk of punishing him because of his poverty. We reject that argument and affirm the order.

¶2 Pursuant to a plea agreement, Jackson pled no contest to delivering less than 500 grams of marijuana. A charge of delivering cocaine was dismissed and read in for sentencing purposes. The court sentenced Jackson to thirty months in prison based in part on its inference that Jackson supported himself by selling drugs. At the postconviction hearing, the court further explained that it did not mean to imply that Jackson supported himself solely by selling drugs. Rather, his sporadic and irregular employment and the expenses for his lifestyle suggest that he supported himself in part through drug trafficking. The significance of that inference to the sentencing court was based on the court's belief that probation, jail and treatment are appropriate for a person who delivers drugs to support his own drug habit, but that punishment in prison is appropriate for one who sells drugs for personal profit.

¶3 The trial court was entitled to draw the inference that Jackson supported himself in part by selling drugs. The circumstances of the marijuana delivery, the read-in cocaine delivery charge, Jackson's prior conviction for selling drugs, his sporadic employment and his statement that he seldom used drugs support the inference that he sold drugs for his personal economic gain. That inference is "objectively reasonable" and was properly considered by the court for sentencing purposes. See *State v. Young*, 212 Wis. 2d 417, 430, 569 N.W.2d 84 (Ct. App. 1997).

¶4 Drawing that inference does not punish Jackson for poverty. Based on Jackson's assertion that he seldom used drugs and the fact that his employment record did not adequately account for his expenditures, the court merely concluded

that Jackson should be punished by incarceration rather than subjected to treatment. Nothing in the record suggests that a wealthier person whose income did not account for his standard of living, and who was not addicted to drugs, would have received a more lenient sentence.

By the Court.—Order affirmed.

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

