

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 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.

**Appeal No. 01-0250-CR
STATE OF WISCONSIN**

Cir. Ct. No. 97-CF-146

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY R. LOFGREN,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for St. Croix County: ERIC J. LUNDELL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jeffrey Lofgren appeals judgments sentencing him to fifteen years in prison for soliciting a child for prostitution and a consecutive twenty-year term for second-degree sexual assault that was stayed in favor of twenty years' probation. He also appeals an order denying his postconviction motion for resentencing. He argues that the trial court violated his due process

rights when it prevented defense counsel from attacking the credentials of an expert witness at sentencing. Because we conclude that the record does not support the factual predicate upon which the argument is based, we affirm the judgments and order.

¶2 By written stipulation, the parties agreed that Dr. Patrick Price should conduct a psychological assessment and sexual deviancy evaluation regarding Lofgren's likelihood to reoffend. After Price filed his assessment and evaluation, defense counsel came to question Price's credentials to conduct a psychological assessment. At the sentencing hearing, the defense elicited testimony from Dr. Paul Reitman that Price was not qualified to give the tests listed and lacked the competency to use the tests correctly.

¶3 Later, during argument to the court, one of Lofgren's attorneys, John Kucinski, argued that the court should not implement Price's recommendations because Price lacked the credentials to perform the evaluation. The court then reminded Kucinski that it was difficult to find experts in the field in that locale and that the State Public Defender's office in that area had utilized Price in other cases. The court also noted that, with Lofgren's prior record, the court would have discredited any report suggesting that he had a very low risk of reoffense. Counsel then discontinued his attack on Price's credentials, explaining at the postconviction hearing that he dropped the issue because "[It] didn't seem like it was going well. Didn't seem like it was being received well. And so I guess we made a tactical decision to not pursue it." Counsel continued with his sentencing argument for eight additional pages of transcript before counsel suggested that maybe he should quit talking. The court responded, "I will not limit what you want to tell me and you can go as long as you want."

¶4 Lofgren’s argument on appeal is based on the false assertion that the trial court “prevented” defense counsel from attacking Price’s qualifications. The record shows that the court did not prevent any line of inquiry or argument. Lofgren’s counsel concluded on the basis of the court’s comments that his argument was not persuasive and he chose to pursue another line of argument. The court’s comments and questions cannot reasonably be construed as counsel being “prevented” from completing that argument. In fact, the trial court specifically informed counsel that the court would not limit counsel’s argument.

By the Court.—Judgments and order affirmed.

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

