

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 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. 01-0530-CR
STATE OF WISCONSIN**

Cir. Ct. No. 99-CF-2694

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARWIN D. HOYE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
MORIA G. KRUEGER, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Darwin Hoyer appeals a judgment of conviction for being party to the crime of first-degree recklessly endangering safety by use of a dangerous weapon. He claims: (1) the evidence was insufficient to support a probable cause determination at the preliminary hearing; (2) the prosecutor made an unsupported assertion regarding extradition at the bail hearing; (3) the

prosecutor spoke negatively about him at the sentencing hearing and introduced evidence beyond that presented at the preliminary hearing in violation of the plea agreement; (4) the prosecutor commented on Hoye's prior record at sentencing without offering documentation; (5) the trial court erred in accepting the State's version of events and imposing the maximum sentence. We affirm for the reasons discussed below.

¶2 We note at the outset that the first three issues have been waived. Hoye waived any objection to the bindover determination by failing to initiate an interlocutory appeal. *State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991). He waived any objection to the bail determination by entering a guilty plea. *State v. Riekkoff*, 112 Wis. 2d 119, 123, 332 N.W.2d 744 (1983). And, he waived any claim that the State violated the plea agreement by failing to bring that issue to the trial court's attention at the sentencing hearing prior to the imposition of sentence.¹ *State v. Howard*, 2001 WI App 137, ¶12, 246 Wis. 2d 475, 630 N.W.2d 244.

¶3 Hoye's remaining sentencing issues are without merit. As the State correctly points out, the rules of evidence do not apply at sentencing hearings. WIS. STAT. § 911.01(4) (1999-2000);² *State v. Mosley*, 201 Wis. 2d 36, 45, 547 N.W.2d 806 (Ct. App. 1996). Courts may consider uncharged and unproven past conduct as evidence of the defendant's character. *State v. Von Loh*, 157 Wis. 2d 91, 96, 458 N.W.2d 556 (Ct. App. 1990). Here, the State told the trial court what

¹ Hoye did object to the accuracy of the State's version of events, as we discuss below.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

the probation agent had said about prior charges against Hoye. There is no requirement that the State offer admissible evidence to “prove” prior convictions. If it turns out that the State provided demonstrably erroneous information to the trial court, and that the trial court relied upon that information, the defendant may move for resentencing on the basis of new information.

¶4 Here, Hoye conceded through counsel at the plea hearing that the court could consider the complaint and the preliminary hearing as a factual basis for his plea. He then attempted to deny at the sentencing hearing that he had carried and discharged a weapon on the night in question, claiming instead that he was merely the driver. However, the State cited conflicting preliminary hearing testimony and information from the complaint to the trial court, and the trial court did not misuse its discretion by choosing to accept the State’s version of events. Nor did the court misuse its discretion by imposing the maximum penalty, given its emphasis on the fact that Hoye had left the jurisdiction while the charges were pending and was, in its opinion, still refusing to accept full responsibility.

By the Court.—Judgment affirmed.

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

