

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2317-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KENNETH A. POPE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

SCHUDSON, J.¹ Kenneth A. Pope appeals from a judgment of conviction, following his guilty plea, for battery, contrary to § 940.19(1), STATS. He argues that he was deprived of his due process rights because the prosecutor allegedly breached the plea agreement. He also argues that the trial court sentenced him based on inaccurate information and placed too much emphasis on his prior criminal record. This court rejects Pope's arguments because he

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

failed to present his issues to the trial court prior to raising them on appeal. Therefore, this court affirms the judgment.

On January 7, 1995, Pope was arrested for physically attacking Nora Coon, the grandmother of his child. According to the complaint, which formed the factual basis for Pope's plea, Pope entered the residence of his "on again/off again" girlfriend and encountered Coon. Pope was intoxicated, began "screaming and swearing," and refused to leave. He ripped the phone out of the wall when Coon attempted to call the police. He caused property damage. He threw a high chair at Coon, threw her to the ground, punched her several times, and "stepped" on her head and face several times. During Pope's beating of Coon, the girlfriend's son ran out of the residence to obtain help. Pope tried to leave the scene but was detained by neighbors until the police arrived.

A criminal appellant alleging error in sentencing (and not following the procedure under § 973.19, STATS.) must file postconviction motions with the trial court prior to filing an appeal unless "the grounds are sufficiency of the evidence or issues previously raised." Because Pope's arguments on appeal do not fall under either exception to the prerequisite of filing postconviction motions with the trial court, this court rejects his arguments.

Additionally, this court declines to address his arguments under its discretionary authority set out in § 752.35, STATS. Whether the trial court considered inaccurate sentencing information or whether the prosecutor breached the plea agreement present factual inquiries that are not within this court's purview.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.