

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 17, 1998

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 98-0235-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHNNY LEE GRIFFIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
MICHAEL J. BYRON, Judge. *Affirmed.*

VERGERONT, J.¹ John Griffin appeals an order entered by the trial court denying his motion for a return of the victim witness surcharge that was

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

apparently collected from him while he was incarcerated. We conclude that the trial court correctly denied the motion, and we therefore affirm.

Griffin entered a plea to a misdemeanor battery charge on September 3, 1996. On September 13, 1996, the court imposed a sentence of 180 days in jail. The court at sentencing did not specifically mention a victim witness surcharge, but the judgment of conviction entered on September 17, 1996, and signed by the court, imposed a victim witness surcharge of \$50.

In October 1997, Griffin filed a motion asking the court to order Green Bay Correctional Institution, where he was then incarcerated, to return to him the victim witness surcharge because the court had not ordered it on the record at sentencing. The court denied the motion, concluding that imposition of the victim witness surcharge is mandatory under § 973.045(1)(a), STATS., and it was properly imposed in the judgment of conviction. Griffin renews on appeal his argument that the victim witness surcharge was improperly imposed because the trial court did not order it on the record at sentencing.

As the State points out, the record does not contain evidence that the victim witness surcharge has been collected from Griffin. However, we will assume that the \$50 victim witness surcharge ordered in the judgment of conviction has been collected from Griffin while incarcerated. We agree with the trial court and the State that Griffin has presented no basis for return of that money to him.

Section 973.045(1)(a), STATS., provides:

Crime victim and witness assistance surcharge. (1)
On or after October 1, 1983, if a court imposes a sentence or places a person on probation, the court shall impose a

crime victim and witness assistance surcharge calculated as follows:

- (a) For each misdemeanor offense or count, \$50.

Imposition of the surcharge is mandatory under the statute, but the procedure for imposition is not specified. The statute does not require that the court impose the surcharge orally on the record, rather than including it in the written judgment of conviction and sentence as was done in this case. We therefore conclude that the trial court correctly denied Griffin's motion.

By the Court.—Order affirmed.

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

