

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 1999

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. 99-0758-CR
99-0759-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LESLIE K. DENT,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Leslie K. Dent appeals from his sentences on convictions for third-degree sexual assault and for a second offense of maintaining a drug trafficking place. He claims his due process rights were violated because the State failed to consolidate his sentencing hearings and because the order of the

sentencing hearings was determined by Dent's probation officer. He further claims the trial court erroneously exercised its discretion when it imposed the maximum sentence on the drug count. However, the record shows that none of these issues were raised before the trial court. We therefore affirm on grounds of waiver.

¶2 Dent pleaded no contest to third-degree sexual assault on February 23, 1998. Judge Dennis G. Montabon of the La Crosse County Circuit Court withheld sentence and placed Dent on probation for three years. On June 15, 1998, after Dent pleaded guilty to a second offense of maintaining a drug trafficking place, Judge John J. Perlich of the La Crosse County Circuit Court withheld sentence and placed Dent on probation for two years. Dent's probation on both convictions was revoked on January 8, 1999.

¶3 Judge Montabon sentenced Dent to eighteen months in prison for the sexual assault on January 21, 1999. On January 22, 1999, Judge Perlich sentenced Dent to one year in prison for maintaining a drug trafficking place, to be served consecutively to the sexual assault sentence. Dent never moved to consolidate the sentencing hearing, never objected at either sentencing hearing to the separate proceedings or to the probation agent's alleged role in scheduling them, and never brought a postconviction motion before either judge raising the consolidation and timing issues or asking for sentence modification.

¶4 It is well established that before this court is to consider, as a matter of right, any issue other than sufficiency of the evidence, it must first be preserved by presentation to the trial court. *See State v. Hayes*, 167 Wis.2d 423, 425-26, 481 N.W.2d 699, 700 (Ct. App. 1992); § 974.02(2), STATS. This rule serves the interests of fairness and judicial economy by affording both the trial court and the

parties an opportunity to consider, and perhaps correct, alleged errors in a timely fashion. *See State v. Erickson*, 227 Wis.2d 758, 766, 596 N.W.2d 749, 754-55 (1999).

¶5 Dent argues that he should be excused from the issue waiver rule in this instance because at the time he was sentenced there was a court of appeals decision in effect which would have barred consolidation. *See Drow v. Schwartz*, 220 Wis.2d 415, 583 N.W.2d 655 (Ct. App. 1998) (*Drow I*) (requiring a defendant to be brought for sentencing following probation revocation before the same branch of the circuit court which had initially granted probation). Thus, he claims he had no basis for raising the consolidation issue until after *Drow I* had been reversed by *Drow v. Schwartz*, 225 Wis.2d 362, 592 N.W.2d 623 (1999) (*Drow II*). We disagree.

¶6 First, we note the supreme court had already granted a petition for review in *Drow I* by the time Dent was sentenced. Dent should therefore have been aware that the question of what court may hear a sentence after probation revocation was not yet finally settled in Wisconsin, and could appropriately have raised any issue which he needed to preserve in the event of a reversal. Moreover, the fact that *Drow I* would have required separate sentencing hearings would not necessarily have barred consideration of whether his separate hearings violated due process. Finally, we do not see how *Drow I* would have affected either the scheduling or the length of sentence issued Dent. Dent has given no explanation for why he could not have raised those questions in the trial court by means of a postconviction motion. The issues have been waived.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

