

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 2003

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. 03-0361
STATE OF WISCONSIN**

Cir. Ct. No. 01CM001496

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

PAUL H. WILLIS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Appeal dismissed in part; order affirmed.*

¶1 FINE, J. Paul H. Willis appeals, *pro se*, from an order denying his motion for postconviction relief. Although he purports to also appeal from the underlying judgment of conviction, and, indeed, from a 1998 drug conviction, both purported appeals are untimely.

¶2 On April 5, 2001, Willis pled guilty to violating a domestic-abuse order, as an habitual criminal. See WIS. STAT. §§ 813.12(4), 813.12(8) &

939.62(1)(a). The habitual criminality charge was based on his January 1998 conviction for possessing five grams or fewer of cocaine with intent to deliver. *See* WIS. STAT. § 961.41(1m)(cm)1 (1997–1998). Although Willis appealed the 1998 drug conviction, the appeal was dismissed for reasons that do not appear on this record. On April 16, 2001, Willis was sentenced to a stayed twenty-month maximum term of incarceration at the Wisconsin State Prisons, and was placed on probation for three years. On April 16, 2001, Willis also signed a form where he indicated that he was “undecided about seeking postconviction relief,” and acknowledged that he had to decide whether to seek postconviction relief “within 20 days.” Willis did not seek postconviction relief.

¶3 In January of 2003, after his probation was revoked, Willis wrote a letter to the sentencing judge asking that eight months be credited to his sentence, asserting that “I see no harm that could be done in granting it.”¹ A successor trial court denied the request in a written order that recited that it “finds that the defendant has not alleged a viable claim for modification,” and, moreover, that any credit for time that should be credited after probation has been revoked must be determined by the Department of Corrections. *See* WIS. STAT. § 973.155(2). Approximately one week later, Willis sent to the original trial court a handwritten letter that has been construed as a notice of appeal. In that letter, he sought reversal of his conviction for

¹ We do not construe Willis’s letter as being a motion brought under WIS. STAT. § 974.06 because that provision is limited to where the movant is “claiming the right to be released upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack.” *See State v. Langston*, 53 Wis. 2d 228, 230–232, 191 N.W.2d 713, 714–715 (1971) (mere assertion of constitutional error is not sufficient). Willis’s letter did not make any such claims.

violating the domestic-abuse injunction, and asserted various matters that were not asserted in his letter to the trial court seeking the eight-month credit to his sentence.

¶4 Willis has filed a brief-in-chief on this appeal and a reply brief. He also sent to this court a fairly lengthy letter following the filing of his brief-in-chief but before he filed his reply brief. By order dated October 6, 2003, this court indicated that any supplementation to Willis's arguments on appeal had to be done in his reply brief, advising Willis that this "court will not consider the letter," which "will not be reviewed by the court in deciding this appeal on the merits."

¶5 A person placed on probation who does not appeal the underlying judgment and whatever stayed sentence is imposed may not after his or her probation is revoked get review of issues that could have been raised on appeal, other than those issues that may be raised *via* WIS. STAT. § 974.06. *See State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95, 96 (Ct. App. 1996).² Further, we will not consider issues that were not presented to the trial court. *Wirth v. Ehly*, 93 Wis. 2d 433, 443–444, 287 N.W.2d 140, 145–146 (1980). Thus, we do not assess Willis's broad-based attack on his conviction and sentence for violating the domestic-abuse injunction. The same is true of his 1998 cocaine-possession conviction. Further, the trial court correctly held that Willis must first seek from the Department of Corrections the sentence credit he wants. *See* WIS. STAT. § 973.155(2).

¶6 Based on the foregoing, Willis's purported appeal from the cocaine-possession judgment of conviction and the domestic-abuse-injunction-violation

² A defendant who is placed on probation and had his or her sentence withheld (rather than imposed and stayed), may seek review of *that* sentence, even though he or she did not appeal the original conviction or the placement on probation. *State v. Scaccio*, 2000 WI App 265, ¶¶7–12, 240 Wis. 2d 95, 103–106, 622 N.W.2d 449, 454–455.

conviction is dismissed; the trial court's order denying Willis's request for sentence modification is affirmed.

By the Court.—Appeal dismissed in part; order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

