

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 10, 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. 96-0443-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEROME PECORE,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Brown County:
WILLIAM M. ATKINSON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Jerome Pecore appeals the forty-year consecutive sentence he received on his three convictions for possession of a firearm by a felon, attempted second-degree intentional homicide, and attempted first-degree intentional homicide, all as a repeater, having pleaded no contest to the charges. Pecore argues that the prosecutor violated his plea agreement promise to make no recommendation on the length of Pecore's sentence. If the

prosecutor materially breached the plea agreement, Pecore has a right to resentencing. *State v. Jorgensen*, 137 Wis.2d 163, 168, 404 N.W.2d 66, 68 (Ct. App. 1987); *State v. Poole*, 131 Wis.2d 359, 365, 394 N.W.2d 909, 911-12 (Ct. App. 1986). We conclude that the prosecutor's comments did not constitute a material and substantial breach of the plea agreement. We therefore affirm Pecore's sentence.

Here, the prosecutor endorsed the presentence report's view that Pecore would have been an appropriate candidate for life without parole had he been charged under the "three strikes, you're out" law. The prosecutor also expressed amazement at how the presentence report arrived at the twenty-year sentence recommendation. Nonetheless, these remarks did not constitute a material and substantial breach of the plea agreement so as to prejudice Pecore at sentencing. The prosecutor had the right to comment on the presentence report as long as he stopped short of offering a specific sentence recommendation. Taken as a whole, the prosecutor's remarks remained faithful to this role, and we fail to see how Pecore was prejudiced. Moreover, the prosecutor later clarified his position. Near his remarks' close, he asked the trial court to give whatever sentence the court determined appropriate.

By the Court. – Judgments affirmed.

This opinion will not be published.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