

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

May 6, 1997

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. 96-0626-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MICHAEL D. SINGLETON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and orders of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Michael Derrick Singleton appeals from a judgment convicting him of one count of attempted armed robbery while concealing identity, one count of armed robbery, and five counts of armed robbery while concealing identity. See §§ 943.32(1)(b) & (2), 939.641(2), and 939.32, STATS. Singleton also appeals from an order denying his postconviction motion,

an order denying his motion to modify sentence, and an order denying his motion for reconsideration.<sup>1</sup> Singleton claims that the trial court: (1) failed to follow the proper procedure for correcting an error in the preliminary hearing transcript; and (2) erroneously exercised its sentencing discretion. Singleton also claims that he received ineffective assistance of counsel. We affirm.

Singleton was charged in a criminal complaint with seven counts: one count of armed robbery, one count of attempted armed robbery while concealing identity, and five counts of armed robbery while concealing identity. The original preliminary-examination transcript indicated that a court commissioner found probable cause on only five of the seven counts:

I do find probable cause as to each and every count, Counts  
One through Six, and on that basis -- excuse me -- Counts  
Two excluded....

Singleton, however, pled guilty to all seven counts as part of a plea bargain.

After Singleton's postconviction counsel noticed the discrepancy between the preliminary-examination transcript and Singleton's plea, postconviction counsel filed a motion requesting that the trial court determine that trial counsel was ineffective for allowing Singleton to plead guilty to all seven counts. The State responded to Singleton's motion by arguing that the preliminary-examination transcript contained an error. The State contended that the court reporter mis-transcribed the words "Count Seven, too, included" by erroneously writing "Counts Two excluded." The State requested that the trial

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<sup>1</sup> Although Singleton's notice of appeal claims error in the denial of his motion for reconsideration, he fails to address this issue in his briefs. We deem it waived. *State v. Johnson*, 184 Wis.2d 324, 344, 516 N.W.2d 463, 470 (Ct. App. 1994) (on appeal, issues raised but not briefed or argued are deemed abandoned).

court correct the record. In support of its argument, the State submitted affidavits of the attorney who prosecuted Singleton, Singleton's trial counsel, and the court reporter who reported the preliminary-examination proceedings. The trial court determined that the preliminary-examination transcript contained an error and corrected the record by determining that Singleton was, in fact, bound over on all seven counts. The trial court also denied Singleton's motion claiming ineffective assistance of counsel. Singleton then filed a motion for reconsideration, seeking to examine the preliminary-examination court reporter. The trial court denied Singleton's motion for reconsideration.

First, Singleton claims that the trial court failed to follow the proper procedure for correcting the transcript, arguing that the trial court erroneously failed to conduct an evidentiary hearing, and failed to make a finding that the corrected transcript was accurate beyond a reasonable doubt.

Section 809.15(3), STATS., provides:

DEFECTIVE RECORD. A party who believes the record, including the transcript of the reporter's notes, is defective or does not accurately reflect what occurred in the trial court may move the court in which the record is located to correct the record. Motions under this subsection may be heard under s. 807.13.

In deciding the prosecution's motion, the trial court had before it the court reporter's affidavit, which stated that she had reviewed her original notes and determined that she had misread her notes when originally preparing the transcript; trial counsel's affidavit stating that according to his recollection, the court commissioner found probable cause on all seven counts; and, the prosecuting attorney's affidavit stating that bindover was on all seven counts. Singleton was unable to produce any evidence other than the contested transcript to support his

version. Based upon this uncontroverted evidence, the trial court's granting of the prosecution's motion to correct the transcript was proper and no hearing was warranted. *See State v. DeLeon*, 127 Wis.2d 74, 81-82, 377 N.W.2d 635, 639 (Ct. App. 1985) (trial court may rely on affidavits that state sufficient grounds in support of a motion to correct the record so that an evidentiary hearing is unnecessary).

*DeLeon* holds that "in a criminal matter, the trial court must be satisfied *beyond a reasonable doubt*" that the contested transcript is accurate. *Id.*, 127 Wis.2d at 82, 377 N.W.2d at 639 (emphasis in original). Singleton argues that the trial court failed to make its finding "beyond a reasonable doubt." The trial court found that the affidavits "conclusively" established the accuracy of the corrected transcript. That was sufficient. *See BLACK'S LAW DICTIONARY* 263 (5th ed. 1979) ("conclusive" means "shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; irrefutable; decision beyond question or beyond dispute").

Singleton next argues that trial counsel was ineffective for allowing him to plead guilty to seven counts even though the preliminary hearing court only bound him over on five counts. Given our analysis and decision on the first issue, this argument has no merit.

Finally, Singleton argues that the trial court's failure to make reference to the sentencing guidelines and its failure to mention all the sentencing factors during sentencing constitutes a misuse of discretion. "[A] sentencing court's failure to consider the sentencing guidelines is not subject to appellate review." *State v. Elam*, 195 Wis.2d 683, 685, 538 N.W.2d 249, 249 (1995); *State v. Halbert*, 147 Wis.2d 123, 432 N.W.2d 633 (Ct. App. 1988).

Singleton also claims that the trial court misused its sentencing discretion in sentencing him to a total of ninety-two years in prison by failing to reference all three primary sentencing factors: gravity of the offense; the character of the offender; and the need for public protection. Specifically, Singleton argues that the trial court did not mention the need to protect the public or mention his rehabilitative needs. In *State v. Johnson*, 74 Wis.2d 26, 245 N.W.2d 687 (1976), the supreme court noted that a misuse of discretion might be found under the following circumstances:

(1) Failure to state on the record the relevant and material factors which influenced the court's decision; (2) reliance upon factors which are totally irrelevant or immaterial to the type of decision to be made; and (3) too much weight given to one factor in the face of other contravening considerations....

*Id.*, 74 Wis.2d at 44, 245 N.W.2d at 694. None of these circumstances is present here. The trial court discussed the “egregious” nature of the offenses. The trial court also discussed Singleton’s prior failures in the criminal system, including a probation violation. It also mentioned Singleton’s absconding from an alternative placement center during his last run-in with the legal system. The trial court noted that this criminal history precluded probation as a disposition in this case. The trial court also stated that the sentence imposed was needed to deter Singleton and others. The trial court clearly considered all relevant sentencing factors including the need to protect the public as well as Singleton’s rehabilitative needs when it sentenced Singleton.

*By the Court.*—Judgment and orders affirmed.

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

