

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 5, 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(1), 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. 96-1123-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RAYMOND A. GLASS,

Defendant-Appellant.

APPEAL from an order of the circuit court for Marinette County:
TIM A. DUKET, Judge. *Affirmed.*

LaROCQUE, J. Raymond A. Glass appeals an order denying his motion to modify his sentence to 120 days in jail following a conviction for misdemeanor battery. Glass contends that the sentence was unduly harsh and unsupported by the evidence. The trial court held that the motion for modification was not timely because it was not filed within sixty days of service of the trial transcript as provided by § 809.30(2)(g), STATS. The court also denied the motion on the merits. Glass does not address the timeliness of his motion. The order is therefore affirmed.

Propositions of law may be taken as confessed if a party does not undertake to refute them. See *Charolais Breeding Ranches Ltd. v. FPC Secs.*, 90

Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979). While the failure to address the issue of timeliness disposes of this appeal, this court has also reviewed the record, including the transcript of the motion hearing, and concurs with the State's contention that the sentence did not violate the standards for sentencing discussed in *McCleary v. State*, 49 Wis.2d 263, 182 N.W.2d 512 (1971).

By the Court. – Order affirmed.

This opinion will not be published.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