

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 22, 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. 96-1729-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PATRICK J. LE SAGE,

Defendant-Appellant.

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

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

PER CURIAM. Patrick LeSage appeals his conviction for one count of racketeering and seven counts of theft by fraud. The charges stemmed from LeSage's false billing of an environmental cleanup fund. The trial court imposed a fifteen-year prison term, followed by ten years' probation. On appeal, LeSage makes two arguments: (1) the trial court erroneously barred LeSage from introducing evidence of similar fraud

by Donald Stewart, a potential but uncalled witness from the prosecutor's witness list; and (2) the trial court issued an excessive and biased sentence. According to LeSage, the trial court harbored bias arising out of LeSage's successful lawsuit against a friend of the trial judge's father and brother. We reject these arguments and therefore affirm LeSage's conviction and sentence.

We uphold the trial court's refusal to permit LeSage to offer evidence of fraud by Stewart. The trial court may exclude irrelevant evidence. *See State v. Brewer*, 195 Wis.2d 295, 308, 536 N.W.2d 406, 412 (Ct. App. 1995). First, LeSage did not show that the evidence was relevant as substantive proof. LeSage never made a substantive connection between Stewart's alleged fraud and the charges against LeSage. As a result, Stewart's fraud would not help substantively clear LeSage of his crimes. Second, LeSage did not show that the evidence was admissible as impeachment evidence. LeSage could not call Stewart adversely on such matters; LeSage did not show how the credibility of an uncalled witness from the prosecution's witness list would have any relevancy to the prosecution's case. In any event, LeSage had no right to question other witnesses about Stewart's fraud; litigants may not impeach witnesses with extrinsic evidence of fraud or other misconduct. *See McClelland v. State*, 84 Wis.2d 145, 159, 267 N.W.2d 843, 849 (1978); § 906.08(2), STATS

We also uphold LeSage's sentence. The trial court made a discretionary decision. *State v. Macemon*, 113 Wis.2d 662, 667-68, 335 N.W.2d 402, 405-06 (1983). Relevant factors include the gravity of the offense, the protection of the public, the rehabilitative needs of the defendant, and the interests of deterrence. *State v. Sarabia*, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). Here, the trial court sentenced LeSage to a fifteen-year prison sentence, with ten years of follow-up probation. The sentence covered one count of racketeering and seven counts of theft by fraud. On its face, this sentence was proportionate to the nature and number of LeSage's crimes. In

addition, we see no bias by the trial court. The trial court stated without qualification that it harbored no bias toward LeSage. This affirmation resolved the matter in the absence of refuting evidence. See *State v. Harrell*, 199 Wis.2d 654, 664-65, 546 N.W.2d 115, 119 (1996). LeSage put no other evidence in the record sufficient to refute the trial court's affirmation of impartiality.

By the Court.—Judgments and order affirmed.

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

