

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

April 8, 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. 97-0019-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DENNIS E. FLEISCHAUER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for St. Croix County:
CONRAD A. RICHARDS, Judge. *Affirmed.*

CANE, P.J. Dennis Fleischauer appeals from the trial court's order denying his motion for the court to reconsider its sentence. This case has a lengthy history, dating back to Fleischauer's conviction on April 25, 1994, for criminal damage to property. We have previously affirmed the trial court's order modifying Fleischauer's probation to include thirty days of confinement because of his failure to make restitution payments. Since that time, Fleischauer's probation

was revoked and he was resentenced on January 3, 1996, to six months in the county jail.

Fleischauer's sole contention on appeal is that the trial court erred by refusing to consider Fleischauer's motion for reconsideration and modification of the sentence because it was untimely. Although there was a discussion by the attorneys and the court as to whether Fleischauer's motion to reconsider the sentence was timely, it is apparent from the record that the trial court denied the motion because the merits of the sentence had been adequately addressed at the January 3, 1996, hearing, not because it was untimely. The trial court stated:

The Court is going to deny the motion for reconsideration. I feel that it was adequately taken up in the January, '96 hearing. And based upon that the Court is going to grant the prosecution's motion to deny.

Therefore, because the trial court did not deny the motion because it was untimely, this court rejects Fleischauer's contention and the order denying his motion for reconsideration of sentence is affirmed.

By the Court.—Order affirmed.

This opinion will not be published.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

