

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 10, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-3057-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT GAREL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Roggensack, JJ.

¶1 PER CURIAM. Robert Garel appeals from an order denying his motion for a reduced sentence. The dispositive issue is whether Garel presented clear and convincing evidence of a new sentencing factor. We conclude that he did not and therefore affirm.

¶2 Garel was sentenced in 1991 after his probation was revoked on a robbery conviction. Among those testifying at the sentencing hearing was the program manager of a drug and alcohol treatment facility where Garel spent time while on probation. Garel contends that this testimony included privileged information about his treatment and should have been excluded from consideration under the patient's privilege set forth in WIS. STAT. § 905.04(2) (1997-98).¹ The court's alleged error in considering the privileged information was the new factor identified in Garel's motion. However, records and information about treatment ordered as a condition of probation are not privileged. *See State v. Verstoppen*, 185 Wis. 2d 728, 743-44, 519 N.W.2d 653 (Ct. App. 1994). Because the trial court properly considered this information, its use cannot be considered a new factor justifying a reduced sentence.

¶3 Garel's brief raises various other issues concerning the 1991 sentencing proceeding. He did not raise them in the trial court and has therefore waived those issues on appeal. *See Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980). Even had he raised them in the trial court, his motion would have been untimely. *See State v. Hayes*, 167 Wis. 2d 423, 425-26, 481 N.W.2d 699 (Ct. App. 1992).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

