

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 19, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal Nos. 01-1989
01-1990**

**Cir. Ct. No. 01-FO-213
01-FO-250**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN C. CLEVELAND,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Oneida County:
ROBERT E. KINNEY, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ John Cleveland appeals judgments fining him and suspending his hunting and fishing privileges for administrative code violations. He contends that (1) the sentence was excessive and imposed because he chose to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

represent himself; (2) the court should have appointed a public defender; (3) he had been offered a less severe result in plea bargain negotiations; and (4) the jury was prejudiced by evidence of his prior unrelated offenses. This court rejects Cleveland's arguments and affirms the judgments.

¶2 In February 2001, Wisconsin Department of Natural Resources conservation warden Tom Kroeplin issued citations to Cleveland on two occasions. One citation was for ice fishing in a locked shanty, in violation of WIS. ADMIN. CODE § 20.11(1)(b), and the other was for fishing with unattended lines, in violation of WIS. ADMIN. CODE § 20.06(9). Cleveland pled not guilty, and a jury found him guilty of both violations. The trial court fined Cleveland \$128.60 for each violation and suspended his hunting and fishing privileges for three years.

¶3 Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). The court must articulate the basis for the sentence imposed. *Id.* at 623.

¶4 First, the sentence imposed was not excessive, and the imposition of both fines and a suspension was appropriate. The fines imposed were well within the statutory range. *See* WIS. STAT. § 29.971. The suspension of hunting and fishing privileges is specifically provided for in § 29.971(12):

In addition to any other penalty for violation of this chapter or any department order made under this chapter, the court may revoke or suspend any or all privileges and approvals granted under this chapter for a period of up to 3 years.

Evidence of Cleveland's prior DNR violations was relevant and appropriate at sentencing.² See *State v. Paske*, 163 Wis. 2d 52, 62, 471 N.W.2d 55 (1991). At sentencing, the State was entitled to argue Cleveland's prior DNR violations, just as Cleveland was able to reference his thirty-year history as an outdoorsman. The record shows no trial court bias against Cleveland. Nor does it indicate that the court somehow "punished" Cleveland because he chose to represent himself.

¶5 Second, because the charged offenses were not punishable by incarceration, Cleveland was not entitled to a public defender. See WIS. STAT. § 967.06.

¶6 Finally, Cleveland refers to a more favorable outcome the State offered during plea negotiations. However, the parties did not enter into a plea agreement in this case. Even if they had, the court would not have been a party to or bound by the parties' plea agreement. See *In re Amendment of Rules of Civil & Criminal Procedure*, 128 Wis. 2d 422, 424, 383 N.W.2d 496 (1986).

By the Court.—Judgments affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

² Cleveland incorrectly asserts that the jury heard about his prior convictions for DNR violations. The State mentioned Cleveland's prior violations of DNR regulations and other convictions only after the jury had been dismissed and the court proceeded to sentencing.

