

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 12, 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 No. 02-0940-CR

Cir. Ct. No. 00-CF-85

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL D. LINDBERG,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Burnett County:
ROBERT H. RASMUSSEN, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Paul Lindberg appeals a judgment and an amended judgment that sentence him and impose conditions of probation for second-degree sexual assault of a child. Because we conclude that Lindberg waived or is estopped from raising all of the issues he advances on appeal, we affirm the judgments.

¶2 Lindberg was initially charged with four felonies arising out of sexual contact with three minors. Pursuant to a plea agreement, he pled no contest to one count of sexual contact with a child and the remaining counts were dismissed and read in for sentencing purposes. The court imposed and stayed a twenty-year prison sentence and placed Lindberg on probation for twenty years. As a condition of probation, Lindberg was required to serve one year in the county jail with work release privileges conditioned upon posting \$50,000 in an interest bearing account to be used to pay counseling fees that might be incurred by the three victims.

¶3 Lindberg filed a motion to amend the sentence on the ground that he did not have the required \$50,000. Therefore, he would not get work release and would not keep his job. The victims would not receive any money for counseling for at least one year if he lost his job. The trial court then amended the judgment, clarifying that the payment into the counseling fund was a condition of Lindberg's probation. The court allowed Lindberg and his wife to secure the debt to the fund with a third mortgage on their home and ordered Lindberg to pay \$900 per month until the \$50,000 fund is complete.

¶4 For the first time on appeal, Lindberg argues that the \$900 per month contribution exceeds his ability to pay, that the \$50,000 figure was arbitrary and not supported by evidence, that the court was not permitted to require a contribution to "yet unneeded counseling expenses" to cover speculative, unrealized and unproven future losses and that the court lacked the authority to require Lindberg to mortgage his home because his wife would have to pledge her property as well. None of these issues was properly preserved for appeal. Except for his ability to pay the \$50,000 lump sum, Lindberg never objected to creating the fund, the total amount he would have to contribute, the victims' need for a

therapy fund or the sufficiency of the evidence to support creating the fund. Even in his request for reconsideration, he only raised his ability to make the lump sum payment. The trial court granted relief from that condition. Lindberg waived the issues he raised on appeal by failing to object to any other condition the trial court imposed. *See State v. Erickson*, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999).

¶5 Lindberg is judicially estopped from challenging the requirement that he make periodic payments and secure the debt with a mortgage because he suggested those remedies at the postconviction hearing. He and his wife agreed to mortgage their home to provide security for the payments. Because Lindberg specifically agreed to the very things about which he complains on appeal, he is estopped from challenging the trial court's decision. *See State v. Petty*, 201 Wis. 2d 337, 347-48, 548 N.W.2d 817 (1996). Lindberg may not enjoy the benefits that derive from displaying remorse, concern and cooperation and then later fault the trial court for imposing the very conditions that he requested after he has received the benefits of the trial court's decision.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

