

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 7, 1995

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. 94-1016-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANA RICHARDSON,

Respondent-Appellant.

APPEAL from a judgment and an order of the circuit court for Rock County: J. RICHARD LONG and JAMES E. WELKER, Judges. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Dana Richardson appeals from a judgment of conviction of one count of felony bail jumping, contrary to § 946.49, STATS., and from a postconviction motion for relief. We reverse for the addition of further sentence credit. In all other respects, we affirm.

The complaint charged Richardson with failure to appear for trial on January 13, 1992. Richardson disputed only the intent element of the charge.

Richardson argues that the trial court erred by not permitting him to show that the felony charge on which he was to be tried was later dismissed on the State's motion. He argues that such a showing is relevant to his state of mind. We disagree. Richardson's belief as to the likelihood of dismissal does not tend to make it more or less likely that he missed the appearance intentionally. *See* § 904.01, STATS.

Richardson also argues that the trial court erred by allowing the prosecution on cross-examination to inquire into a fugitive warrant and prosecution. Before trial, the court ruled that such evidence would not be allowed. Richardson argues that the trial court changed its mind without explanation, and therefore erroneously exercised its discretion. However, the record, although incomplete because a sidebar conference was not reported, shows that the decision was made in response to the prosecutor's argument that Richardson's direct examination opened the door to this line of inquiry. Therefore, we reject the argument.

Richardson next argues that he is entitled to a new trial because the prosecutor improperly referred to evidence not in the record during closing argument. However, Richardson waived this issue because he did not move for a mistrial. *State v. Goodrum*, 152 Wis.2d 540, 549, 449 N.W.2d 41, 46 (Ct. App. 1989). He also argues that the prosecutor interfered with his right to a fair trial by interrupting defense counsel three times with meritless objections during closing argument. However, the interruptions were brief and did not deprive Richardson of a fair trial.

Additionally, Richardson argues that the court erroneously exercised its discretion in sentencing him. The court sentenced him to four years in prison, consecutive to any other sentence. We will not disturb a sentence unless the court erroneously exercised its discretion. *State v. Thompson*, 172 Wis.2d 257, 263, 493 N.W.2d 729, 732 (Ct. App. 1992). When imposing sentence, a trial court must consider the gravity of the offense, the offender's character, and the public's need for protection. *Id.* at 264, 493 N.W.2d at 732. The weight given to each sentencing factor, however, is left to the trial

court's broad discretion. *Id.* Here, the trial court gave a sufficient explanation of its sentence and did not erroneously exercise its discretion.

Furthermore, Richardson argues that he is entitled to an additional 166 days of sentence credit under § 973.155(1)(a), STATS. The State concedes that he is entitled to an additional 105 days. However, we reject Richardson's argument with respect to the other 61 days. Those were days in which he was in custody on the charge for which he later failed to appear. This time was not "in connection with the course of conduct for which sentence was imposed." *Id.* The course of conduct, that is, failure to appear, had not even occurred at that time. On remand, the trial court shall amend the judgment and order to reflect an additional 105 days sentence credit.

By the Court.—Judgment and order affirmed in part; reversed in part and cause remanded with directions.

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