

**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.

Nos. 94-1845-CR
94-2720-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEVEN E. ISBELL,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Dane County: P. CHARLES JONES, Judge. *Affirmed.*

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

PER CURIAM. Steven E. Isbell appeals from a judgment of conviction and from an order denying his postconviction motion to exclude statements he made during a conversation with a prison psychologist from the presentence evaluation report.¹ Isbell contends that his conversation with the

¹ These appeals were consolidated by order dated October 20, 1994.

psychologist should not have been considered by the trial court during sentencing because it was protected by the psychologist-patient privilege under § 905.04(2), STATS.² We conclude that the statements were not privileged under § 905.04(2) and consequently, the trial court properly exercised its discretion when it considered them during sentencing. We therefore affirm.

BACKGROUND

Isbell pleaded no contest to one count of burglary, contrary to § 943.10(1)(a), STATS. Isbell's parole on another matter was revoked and he was sent to Dodge Correctional Institution to await sentencing. There, Dr. Debra L. Anderson conducted an interview with Isbell where he told her that he had "fantasies that he [would] drive across the country to get back at those people who have hurt him in the past."

Isbell moved to delete the statements made to Dr. Anderson from his presentence report on the grounds that they were privileged. The trial court denied the motion and sentenced Isbell to fifty-eight months in prison. This appeal followed.

STANDARD OF REVIEW

Sentencing is left to the discretion of the trial court, and our review is limited to determining whether there was an erroneous exercise of that discretion. *State v. Bobbitt*, 178 Wis.2d 11, 14, 503 N.W.2d 11, 13 (Ct. App. 1993). We will not interfere if we find a reasonable basis for the court's determination. *State v. Scherreiks*, 153 Wis.2d 510, 517, 451 N.W.2d 759, 762 (Ct. App. 1989). Whether the trial court correctly interpreted § 905.04, STATS., is a question of law which we review *de novo*. See *Steinberg v. Jensen*, ___ Wis.2d ___, ___, 534 N.W.2d 361, 368 (1995).

² Section 905.04(2), STATS., provides in part, "A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition"

PSYCHOLOGIST-PATIENT PRIVILEGE

In order for Isbell's conversation with Dr. Anderson to have been privileged, Isbell must have intended that the statements be confidential and that belief must have been objectively reasonable. *State v. Locke*, 177 Wis.2d 590, 605, 502 N.W.2d 891, 897-98 (Ct. App. 1993). Section 905.04(1)(b), STATS., provides in part, "[a] communication or information is 'confidential' if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview"

Although Isbell may have intended his statements to be confidential, that belief was unreasonable. Isbell was never told by Dr. Anderson that whatever he disclosed to her would remain confidential. Instead, Isbell was told that the interview was being conducted for "staffing" purposes. It was clear from a prison inmate's handbook that although the interview might have been useful for treatment and diagnosis, the information was sought for other purposes such as to permit the staff to evaluate Isbell's needs and to make appropriate custody, placement, and program recommendations. Accordingly, we conclude that Isbell's statements to Dr. Anderson were not privileged. Therefore, the trial court did not erroneously exercise its discretion when it considered them during sentencing.

By the Court.— Judgment and order affirmed.

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