

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 9, 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(1), 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. 94-2835-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT J. MAURIZZI,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Rock County: JAMES WELKER, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Vergeront, JJ.

PER CURIAM. Robert Maurizzi appeals from a judgment convicting him of burglary. He also appeals from an order denying his postconviction motion to modify his sentence. The issue is whether the trial court properly exercised its sentencing discretion. We reject Maurizzi's arguments and affirm.

The court may sentence a defendant to the intensive sanctions program on the Department of Corrections' recommendation in the presentence investigation report. Section 973.032(2), STATS. If the DOC does not recommend the program, the court may order it to further assess and evaluate the person, and then may sentence the person to the program unless the DOC considers probation presumptively appropriate. *Id.*

Here, the DOC's presentence report noted seven previous felony convictions when there were actually just four. As a result, the report, which recommended a prison sentence, mistakenly deemed Maurizzi ineligible for intensive sanctions.

At the sentencing hearing, counsel pointed out the error and asked the court to order the DOC to assess Maurizzi using the correct information. The court refused, noting that it was not interested in the report's recommendation. After considering Maurizzi's prior record, his failure to complete probation on his earlier charges, his admitted drug and alcohol abuse, his irresponsible lifestyle, and the sentencing matrix, the court sentenced him to a five-year prison term. Postconviction relief from the sentence was denied.

On appeal, Maurizzi argues that the court should have allowed him the benefit of a DOC assessment of his intensive sanctions eligibility based on proper information about his felony record. However, at Maurizzi's postconviction hearing on the issue, the trial court fully explained why it would not have sentenced Maurizzi to intensive sanctions regardless of the DOC's recommendation. Those comments persuade us that further assessment by the DOC would have been meaningless.

At sentencing, Maurizzi's counsel alleged numerous other errors in the presentence report. On appeal, Maurizzi asks that we accept those allegations as fact, and vacate the sentence because the report was so misleading that it irrevocably tainted the proceedings. The trial court's sentencing remarks and postconviction explanation of the sentence make clear that the presentence report made no difference in the sentence Maurizzi ultimately received. Again, the trial court's statements are persuasive.

By the Court. – Judgment and order affirmed.

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