No. 95-1682-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID HAYES,

Defendant-Appellant.

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

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. David Hayes appeals from a judgment convicting him of first-degree sexual assault of a child, and from an order denying his motion to modify his sentence. In sentencing Hayes, the trial court relied on the evaluation of Dr. David Goldfoot, a psychologist. Goldfoot, in turn, relied in substantial part on damaging information about Hayes contained in investigative reports from juvenile proceedings conducted in other counties.

Hayes did not object when the court ordered those reports released to Goldfoot, pursuant to the State's motion. However, he did object to their release at the sentencing hearing. Because the objection came too late, Hayes has waived the issue on appeal. We therefore affirm.

Under § 48.78(2), STATS., the trial court lacked authority to order the records released to Goldfoot. Only the juvenile court in the counties where the records were kept had that authority. Section 48.78(2)(a), STATS. Had Hayes made a timely objection pointing out that fact, the trial court could have directed the State to apply to the proper courts. Because Hayes did not, the trial court had no opportunity to correct its error until it was too late. Failure to timely object, such that the trial court has the opportunity to correct its error, constitutes waiver on appeal. Section 901.03(1)(a), STATS.

By the Court.—Judgment and order affirmed.

This opinion will not be published.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