

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JUNE 11, 1996**

**NOTICE**

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3467-CR

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**RANDY O. BOHARDT,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Shawano County: THOMAS G. GROVER, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Randy Bohardt appeals a judgment convicting him of one count of felon in possession of a firearm and one count of felony bail jumping and an order denying postconviction relief. Bohardt challenges the trial court's exercise of sentencing discretion, arguing that (1) the trial court relied on inaccurate facts to conclude that Bohardt had disrespect for the court and thought he was above the law, and (2) the trial court punished Bohardt for his political views, attitudes and associations. Because the record fails to support Bohardt's claims of error, we affirm.

After a jury found Bohardt guilty of one count of felon in possession of a firearm, contrary to § 941.29(2), STATS., and one count felony bail jumping, contrary to § 946.49(1)(b), STATS., Bohardt was sentenced to two years on each count, to be served consecutively. His previous record includes: (1) felony uttering a forged writing; (2) felony child enticement; (3) misdemeanor fourth-degree sexual assault; (4) misdemeanor retail theft; (5) second-degree sexual assault; (6) another separate conviction for second-degree sexual assault; and (7) two misdemeanors of obstructing an officer as an habitual criminal and a hit and run with injuries. At the time he committed the offenses that give rise to this appeal, he was out on bond after a jury had found him guilty of second-degree sexual assault of a child with threat of use of force and child enticement, both felonies.

Bohardt filed numerous motions before sentencing: (1) objecting to the court's jurisdiction as "not a Common Law Court of Pleas;" (2) for a writ of prohibition, claiming he was denied due process and equal protection because he "is alleged to be a member of a class which is alleged as felon," and "a member of a class which is known as the Posse Comitatus." Bohardt also "accused the Respondents [the circuit court judge, among others] of being felons;" (3) a petition for habeas corpus pursuant to the Northwest Treaty Ordinance 1787, alleging "judicial misconduct" and "malfeasance in office" by Judge Grover, who knows he and the district attorney are "criminals and continue to be criminals;" (4) writ of error coram nobis alleging fraud and misconduct by the court; and (5) numerous other documents and correspondence that do not appear to have any bearing on Bohardt's prosecution, but refer to the claimed corrupt and defective justice system in Shawano County.

At sentencing, Bohardt asked the trial court for a ruling on his motions. The trial court asked Bohardt numerous times if he would explain his motions to the court. Bohardt eventually explained that the court's failure to have a forfeiture hearing on the bond and possession of the gun renders it void as evidence. He also stated that the court was without jurisdiction for failure to take an oath of office. The court found no ground for relief, characterized the motions as incomprehensible and proceeded to sentencing. The court's sentencing comments included the following:

And I don't mean to over [dramatize] this, but when we see what happens down in Oklahoma, I got to start thinking

about people who are confronting the government like you do.

And these motions that you filed really have no merit [and] leads me to believe that you have just finally said "the heck with the system" ....

... I don't think there is any hope for rehabilitation. I think that is what you're telling me, "Screw you, Judge. I am going to sue you. I am going to sue the clerk. I am going to play this game." ... And it makes it clear to me that there isn't much hope of rehabilitation. Plus, you got that prior record. Every time somebody commits another crime it leads me to believe anyway that they are not getting the message and they are not changed.

The court observed that the crimes for which Bohardt was being sentenced were not so violent in themselves as to warrant a maximum sentence. However, the court observed: "But when you start looking at a person's record and you start looking at their attitude, it starts getting a little scary because you start wondering, is this person going to get the message, any hope they are going to stop breaking the law?"

The court also stated: "And you may not like the system but without the system then it is going to be who is the strongest and got the biggest bully and the biggest guns and that is the one that is going to win." The court acknowledged that our system was not perfect, but that it was the only thing we had to stop people from ignoring the law, commenting: "It is a travesty when I see what is going on in Montana, throwing it back, refusing to cooperate with law enforcement, refusing to pay taxes."

Although a sentencing court's remarks may be interpreted in different ways, we must presume the trial court acted reasonably. *State v. Wickstrom*, 118 Wis.2d 339, 356, 348 N.W.2d 183, 192 (Ct. App. 1984). The trial court has broad discretion in determining the length of sentence within the permissible range set by statute. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). We will affirm the trial court's exercise of discretion as

long as it has a reasonable basis and was made in accordance with accepted legal standards and the facts of record. *State v. Jenkins*, 168 Wis.2d 175, 186, 483 N.W.2d 262, 265 (Ct. App. 1992). Our review is thus conducted in light of a strong public policy against interference with the trial court's sentencing decision. *State v. J.E.B.*, 161 Wis.2d 655, 661, 469 N.W.2d 192, 195 (Ct. App. 1991).

The primary factors the court considers when imposing sentence are the gravity of the offense, the character and rehabilitative needs of the offender, and the public's need for protection. *State v. Echols*, 175 Wis.2d 653, 682, 499 N.W.2d 631, 640 (1993). Sentencing courts are obligated to consider factors such as the defendant's demeanor and need for rehabilitation; a defendant's attitude toward the crime may well be relevant in considering these things. *State v. Fuerst*, 181 Wis.2d 903, 916, 512 N.W.2d 243, 247 (Ct. App. 1994). A defendant's remorse, repentance and cooperativeness are proper considerations. *J.E.B.*, 161 Wis.2d at 662, 469 N.W.2d at 195.

If the sentence is premised on incorrect information, unwarranted assumptions or improper factors, an erroneous exercise of discretion results. *Fuerst*, 181 Wis.2d at 909-10, 512 N.W.2d at 245. Generally, a defendant seeking resentencing based on inaccurate information has the burden of proving by clear and convincing evidence that the court actually relied on inaccurate information. *State v. Johnson*, 158 Wis.2d 458, 468, 463 N.W.2d 352, 357 (Ct. App. 1990).

The first issue is whether the record supports the trial court's conclusion that Bohardt thought he was above the law and was disrespectful to the court. Bohardt came to court with a long record of serious crimes. Bohardt's criminal record standing alone supports an inference that Bohardt thought he was above the law.

The record also supports the trial court's inference that Bohardt was disrespectful of the court's authority. Bohardt filed numerous groundless attacks on the court's authority. He offers no factual or legally sufficient bases for these attacks. It is reasonable for a court to infer that frivolous litigation is aimed at draining the court's resources and impeding the administration of

justice. See *Minniecheske v. Griesbach*, 161 Wis.2d 743, 749, 468 N.W.2d 760, 763 (Ct. App. 1991).

The trial court stated that Bohardt's attitude of "Screw you, Judge," combined with his lengthy criminal record belied any hope for rehabilitation. "[A] belief that one is above the law is insidious and bears directly upon the offender's potential for rehabilitation." *J.E.B.*, 161 Wis.2d at 672, 469 N.W.2d at 199. Bohardt's demeanor, remorse, cooperativeness and attitude are permissible factors to be considered at sentencing. See *Fuerst*, 181 Wis.2d at 915-16, 512 N.W.2d at 247. On the record before it, the trial court could reasonably conclude that Bohardt thought he was above the law, was disrespectful to the court, and showed little prospect for rehabilitation.

Bohardt also argues the trial court erroneously concluded that Bohardt could not be rehabilitated because he affiliated with groups that advocate the overthrow of the government. Bohardt contends the court suggested that Bohardt was the same sort as those in Montana and Oklahoma advocating violent government overthrow. The record fails to support Bohardt's argument. The court's references to these groups demonstrated the court's concern with lawlessness in general; the court pointed out that a logical extension of lawless resulted in a society where the biggest bully and the one with the biggest gun would win. The record fails to support Bohardt's argument that the trial court relied on inaccurate or erroneous information at sentencing.

Next, Bohardt argues that the trial court violated his first amendment rights by considering at sentencing his political beliefs and associations. The record fails to support his contention. Generally, "a sentence based on activity or beliefs protected by the first amendment is constitutionally invalid." *J.E.B.*, 161 Wis.2d at 665, 469 N.W.2d at 196. However, "[s]ufficient linkage between the claimed protected activity and the criminal conduct may well render the activity unprotected." *Id.* at 669, 469 N.W.2d at 198. For example, a political belief that one could violate laws with impunity poses a danger to the public, and may be an appropriate sentencing consideration. *Wickstrom*, 118 Wis.2d at 357, 348 N.W.2d at 192. However, it is error to admit evidence of a defendant's unpopular political beliefs when they had no relevance to the crime for which the defendant was being sentenced. See *State v. Marsh*, 177 Wis.2d 643, 647, 649, 502 N.W.2d 899, 900, 901 (Ct. App. 1993).

Here, the record fails to support the assertion that what the trial court considered was evidence of political beliefs and not demeanor, attitude and cooperativeness.

Nonetheless, Bohardt claims that: "After all, Mr. Bohardt just went deer hunting; his offense had nothing to do with the Posse Comitatus or fomenting insurrection. Whatever his political beliefs may be, they had nothing to do with the offense." Bohardt's laxity with the record evades rather than illuminates the issue. Any meaningful comparison between the offenses and the political beliefs must start with an accurate description of both. First, Bohardt's argument ignores the elements of the offenses for which he was sentenced.

Second, Bohardt fails to describe his political beliefs, if he has any. Based upon his motions, which the trial court found "incomprehensible," and for which no legal or factual basis is now advanced, and Bohardt's prior record, the trial court inferred that Bohardt's attitude was one of ignoring the law. The trial court concluded that by his attitude and repeated offenses, Bohardt failed to demonstrate any potential for rehabilitation. The sentencing transcript focuses on Bohardt's demeanor, prior record and attitudes. Bohardt has failed to demonstrate that the court relied on improper considerations.

When a defendant attacks the judge personally, or files groundless frivolous motions, the trial court must take care to sentence the defendant based upon appropriate considerations. The record reveals that the court did so here.

To the extent that Bohardt's attitude can be interpreted to bear on a political belief, the record reveals no error. Bohardt was convicted for possessing a firearm when it was illegal for him to do so. The crimes evinced a belief that rejected the court's authority to prohibit him from possessing a firearm. Bohardt's alleged political belief that the government had no control over his conduct is related to his attitude that the court has no authority over him. *See id.* Because the record reveals a connection between the attitude or belief and the crime, and discloses a reasonable basis for the sentences imposed, the court properly exercised its discretion.

*By the Court.* – Judgment and order affirmed.

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