

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

AUGUST 20, 1996

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. 95-3610-CR
95-3611-CR
95-3612-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RICKY A. DUCOMMUN,

Defendant-Appellant.

APPEALS from judgments of the circuit court for Eau Claire County: THOMAS H. BARLAND, Judge. *Affirmed.*

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

PER CURIAM. Ricky Ducommun appeals sentences imposed on his convictions for felony substantial battery, misdemeanor battery, bail jumping, obstructing an officer, and two counts of disorderly conduct, having pled guilty to the charges. The substantial battery charge resulted from a five-man attack on two victims. The other charges resulted from acts Ducommun

committed while released on bail on the substantial battery charge and other subsequently dismissed charges. The trial court imposed maximum, consecutive sentences on each charge for a total of nine years in prison. On appeal, Ducommun argues that the sentences were excessive. We reject this argument and affirm his sentences.

We first agree with the State's argument that Ducommun has not preserved the sentence issue for appellate review. Under *State v. Meyer*, 150 Wis.2d 603, 442 N.W.2d 483 (Ct. App. 1989), defendants waive such matters on appeal whenever they fail to file a motion to modify sentence. Here, Ducommun did not file a trial court motion to modify sentence. Rather, he proceeded directly to this court. We therefore uphold his sentence on the basis of waiver under *Meyer*. Nonetheless, we also uphold the substantive merits of the trial court's decision to impose maximum consecutive sentences on each charge.

The trial court's sentencing decision was discretionary. *State v. Macemon*, 113 Wis.2d 662, 667-68, 335 N.W.2d 402, 405-06 (1983). Sentencing courts have discretion to determine the weight to give to each of the relevant factors, *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975), and may base their sentences on any of the factors after all have been reviewed. *Anderson v. State*, 76 Wis.2d 361, 366-67, 251 N.W.2d 768, 771 (1977). Relevant sentencing factors include the gravity of the offense, the protection of the public, the rehabilitative needs of the defendant, and the interests of deterrence. *State v. Sarabia*, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984).

Other relevant factors are the defendant's age, character, personality, social traits, remorse, repentance, cooperativeness, educational level, employment background, degree of culpability, demeanor at trial, his need for close rehabilitative control, the rights of the public, and the vicious or aggravated nature of his crime. *State v. Killory*, 73 Wis.2d 400, 408, 243 N.W.2d 475, 481 (1976). Like other discretionary matters, sentencing decisions must have a reasonable basis in the record and demonstrate a logical process of reasoning applying proper legal standards to the facts of record. *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519-20 (1971). Here, the facts of

record and applicable legal standards permitted the trial court to impose maximum consecutive sentences.

In the substantial felony battery incident, Ducommun and four others attacked and severely battered two persons. One victim went into a coma and suffered an internal head injury of a kind one physician had seen before only in car accidents. After reviewing the incident, the trial court characterized the perpetrators as hoodlums, calling the attack one of the worst in the area in many years. It held Ducommun responsible not only for his own acts, but also for his accomplices', citing both Ducommun's specific failure to stop the attack and general legal principles making the acts of those who aid and abet relevant to sentencing. After reviewing Ducommun's record, the trial court ruled that he posed a danger to the public and could not control his criminal behavior.

The trial court ruled that Ducommun had also demonstrated his inability to control his behavior by the way he had committed five additional crimes while released on bail on the felony substantial battery charge. These five crimes took place on two dates within five months of the substantial felony battery incident. In the court's view, Ducommun's crimes made the public's protection the paramount concern in Ducommun's sentencing and the public's right to expect appropriate punishment the second one. The trial court found that anything less than maximum consecutive sentences would depreciate the seriousness of Ducommun's crimes and increase the danger to the public. The trial court told Ducommun that the public had a right to protection from someone like him.

These findings represent a proper analysis of the relevant factors and reasonable application of the pertinent legal standards. The trial court's findings gave appropriate weight to Ducommun's crimes, character, and dangerousness. As the trial court noted, Ducommun committed the felony substantial battery with a group of hoodlums, and the battery had caused severe injuries to the victims with potential lifelong effects. Ducommun had also committed the six crimes at three separate times and places in what amounted to a five-month crime spree. He committed the last five crimes while released on bail on the felony substantial battery charge. This sequence of

events demonstrated that restrictions short of incarceration, such as bail, had not succeeded in deterring him from criminal activity.

Under these circumstances, the trial court could duly give the public's need for protection the paramount role in Ducommun's sentencing. It could view the crimes from the community's perspective and impose a level of punishment sufficient to meet the substantial risk Ducommun posed to the public over the long term. Taken together, the maximum, consecutive sentences bore a close connection to Ducommun's crimes, character, and dangerousness. The trial court had no duty to give significant weight to the remorse Ducommun professed at the sentencing hearing. It could rationally give Ducommun's deeds more weight than his words. It could also reasonably conclude that a shorter sentence would depreciate the seriousness of the crimes and expose the public to greater danger. In short, the trial court properly exercised its sentencing discretion.

By the Court.—Judgments affirmed.

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