COURT OF APPEALS DECISION DATED AND RELEASED

November 13, 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.

No. 96-0201-CR

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM J. DRESEN, JR.,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed*.

Before Anderson, P.J., Brown and Nettesheim, JJ.

PER CURIAM. William J. Dresen, Jr. appeals from a judgment of conviction and an order denying his sentence modification motion. On appeal, Dresen challenges his sentence. We uphold the sentence and affirm.

The charges against Dresen arose out of a September 1993 incident in which Dresen made five harassing telephone calls to and entered the apartment of an upstairs neighbor without her consent, brandished a gun and punctured her neck with a box cutter, nearly severing a major artery. In

exchange for Dresen's guilty plea to armed burglary, intermediate aggravated battery while armed and first-degree recklessly endangering safety while armed, the State agreed to recommend consecutive probation on the last count of the amended information, first-degree recklessly endangering safety.

At sentencing, the State recommended between twenty and twenty-five years on counts one and two and a consecutive maximum term on count three stayed in favor of probation. The defense recommended a moderate prison term.

In sentencing Dresen, the trial court noted his history of drug and alcohol abuse and that the victim nearly had her artery severed in the attack. The court expressed its desire to impose a lengthy sentence which would subject Dresen to a substantial period of correctional control. Although the court expressed a desire to sentence Dresen to twenty years in prison with consecutive probation, it was concerned that Dresen would be paroled after an insufficient period of incarceration, and that if he reoffended his probation could not be revoked. The court noted that if the legislature changed the sentencing statutes to permit revocation of probation when a parolee reoffends, the court would consider modifying Dresen's sentence. The court later denied Dresen's postconviction challenge to the sentence, stating that its goal was to impose "the maximum possible period of control of the defendant" and that this was "the driving engine which led to the selection of the sentence which was imposed." Dresen appeals.

We review whether the trial court misused its sentencing discretion. ***State v. J.E.B.,*** 161 Wis.2d 655, 661, 469 N.W.2d 192, 195 (Ct. App. 1991), *cert. denied,* 503 U.S. 940 (1992). We presume that the trial court acted reasonably, and the defendant must show that the trial court relied upon an unreasonable or unjustifiable basis for its sentence. ***Id.*** The weight given to each of the sentencing factors is within the sentencing judge's discretion. ***Id.*** at 662, 469 N.W.2d at 195. Public policy strongly disfavors appellate courts interfering with the sentencing discretion of the trial court. ***State v. Teynor,*** 141 Wis.2d 187, 219, 414 N.W.2d 76, 88 (Ct. App. 1987).

The primary factors to be considered by the trial court in imposing a sentence are the gravity of the offense, the offender's character and the need to

protect the public. ***State v. Borrell,*** 167 Wis.2d 749, 773, 482 N.W.2d 883, 892 (1992).

Dresen argues that the trial court considered an improper basis in sentencing him because it focused on its inability to impose probation consecutive to release on parole for armed burglary. *See* ***Grobarchik v. State,*** 102 Wis.2d 461, 467-69, 307 N.W.2d 170, 174-75 (1981) (court may not impose period of probation running concurrently with parole). Dresen argues that the court erred when it concluded that maximum consecutive sentences were the only sentencing option.

Our review of the record indicates that the trial court's comments regarding its inability to impose consecutive probation were extraneous remarks which do not invalidate its exercise of sentencing discretion. The court considered the gravity of the offense, Dresen's character and the need to protect the public before it imposed a lengthy sentence. These are the appropriate factors in sentencing.

A court may consider when a defendant would be released from prison in fashioning a sentence. *See* ***State v. Stuhr***, 92 Wis.2d 46, 51-52, 284 N.W.2d 459, 461 (Ct. App. 1979). A trial court may also consider the effect of the sentence it imposes. *See* ***id***. at 51, 284 N.W.2d at 461. These considerations are apparent from the court's sentencing remarks.

Dresen argues that consecutive maximum terms constitute an unduly harsh sentence and they exceed the sentence sought by the State. First, trial courts do not blindly accept or adopt sentencing assessments and recommendations from any particular source. ***State v. Johnson***, 158 Wis.2d 458, 465, 463 N.W.2d 352, 355 (Ct. App. 1990). Second, when we review a sentence, we look to the entire record and to the totality of the court's remarks. *See* ***J.E.B.***, 161 Wis.2d at 674, 469 N.W.2d at 200. Here, the record of the sentencing hearing and the decision denying Dresen's sentence modification motion indicate that the trial court intended to subject Dresen to an extensive period of correctional control. The trial court expressed its reasons for imposing the maximum terms, and we discern no misuse of the trial court's discretion.

By the Court.—Judgment and order affirmed.

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