COURT OF APPEALS
DECISION
DATED AND RELEASED

March 4, 1997

NOTICE

No. 96-0746-CR

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

State of Wisconsin,

Plaintiff-Respondent,

v.

Tito Quixte Grimes,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Tito Grimes appeals from the judgment of conviction, following his guilty plea, for first-degree reckless homicide while using a dangerous weapon, party to a crime, and from the order denying his motion for postconviction relief. He argues that the trial court erroneously exercised sentencing discretion and improperly denied his request for an evidentiary hearing. We affirm.

Grimes and others, working in a drug house, shot Frederick Wilder in the back and arm as he fled from the drug house after attempting to rob it. The maximum possible penalty was forty-five years in prison; the trial court sentenced Grimes to thirty years. Grimes argues "that this sentence shocks the public sentiment, is outrageous and excessive and is the product of an erroneous exercise of discretion." He maintains that the sentence "was excessive under the facts of the case and in light of [his] history." He further asserts that "[t]here was an insufficient reasoning process in sentencing to support such an extreme conclusion that the period of incarceration was necessary," and that "[t]here is insufficient evidence that the court considered any relevant factors which [the trial court] is required to consider...." We disagree.

In reviewing whether a trial court erroneously exercised sentencing discretion, we consider whether the trial court considered appropriate factors and whether the trial court imposed an excessive sentence. ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984). We must respect the strong policy against appellate court interference with a trial court's sentencing determination and, indeed, we must presume that the trial court acted reasonably. ***State v. Echols***, 175 Wis.2d 653, 681-82, 499 N.W.2d 631, 640, *cert. denied*, 510 U.S. 889 (1993).

The sentencing court must consider three primary factors: (1) the gravity of the offense; (2) the character of the offender; and (3) the need to protect the public. ***State v. Harris***, 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation results; the viciousness or aggravated nature of the defendant's crime; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the needs and rights of the public; and, the length of the defendant's pretrial detention. ***State v. Jones***, 151 Wis.2d 488, 495-96, 444 N.W.2d 760, 763-64 (Ct. App. 1989). Additionally, the weight to be given each factor is within the trial court's discretion. ***State v. Curbello-Rodriguez***, 119 Wis.2d 414, 434, 351 N.W.2d 758, 768 (Ct. App. 1984).

When a defendant argues that his or her sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

The record reflects the trial court's consideration of all required sentencing criteria. The trial court reviewed an extensive presentence report and heard arguments of counsel, all of which addressed the seriousness of the crime, the protection of the community, and Grimes's personal history and individual circumstances. The trial court also read a letter from Grimes and heard emotional and thoughtful comments from Grimes, his mother, and Wilder's mother and two siblings. Most poignantly, the mothers conveyed the excruciating pain of both families. Martha Wilder stated, in part:

> And the day when that happened, Your Honor, I sit in my kitchen window for six hours, six full hours without movin', waitin' for my baby to come home, and he never came. Sometimes I find myself, it used to be where he would go and stay for a period of time, I would go lookin' for him. Even now I find myself walkin' and lookin' for my baby.

Patricia Grimes stated, in part:

> But I love [my son]. And I feel so sorry for [Frederick Turner's] mother. I really do. I wish—I don't even know what to say to her 'cuz I lost my sister [the year before "killed behind a drug deal"]. I stayed in intensive care thirty-seven days and watched her die so I know how she feels. I look at her picture every day and I know you can't take that pain away. So we just—I just have to deal with whatever—I just having to go along with whatever goes, 'cuz once Tito is gone, I still have more pain. I still won't—It won't ever be over for me because I won't forget the way it happened, the way it happened.

The trial court explicitly referred to the presentence report regarding Grimes's individual difficulties and circumstances and his readiness for rehabilitation. The court commented that "there are aggravating circumstances in the case" and on Grimes's ability to understand the consequences of his actions.

Although the trial court failed to explicitly identify certain factors and failed to elaborate on others, we are satisfied that the sentencing record supports the trial court's sentencing decision. *See* ***McCleary v. State***, 49 Wis.2d 263, 282, 182 N.W.2d 512, 522 (1971) (if trial court sentencing statement inadequate, reviewing court must "search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained"). We also note that in its written decision denying Grimes's postconviction motion, the trial court did detail the aggravating circumstances of the crime as well as others factors that most influenced its sentencing determination. We conclude that the trial court properly exercised discretion and that the thirty-year sentence is not excessive.

Grimes also argues that the trial court erred by refusing to hold an evidentiary hearing. In somewhat confusing fashion, he primarily contends that a hearing was needed not "to simply rehash the sentence," but to assure that the trial court met "its obligation to re-examine the record" to determine whether the sentence was unduly harsh. Grimes then adds, without supporting authority or argument, that a hearing was required to consider his postconviction allegation "that his trial counsel was ineffective in that he was informed incorrectly of the State's offer when deciding whether to enter a plea to the charge," and "that witnesses' names given his attorney were not followed up on."

We review a trial court's denial of an evidentiary hearing under the two-part test enunciated in ***State v. Bentley***, 201 Wis.2d 303, 548 N.W.2d 50 (1996):

> If the motion on its face alleges facts which would entitle the defendant to relief, the circuit court has no discretion and must hold an evidentiary hearing. Whether a motion alleges facts which, if true, would entitle a

> defendant to relief is a question of law that we review de novo.
>
> However, if the motion fails to allege sufficient facts, the circuit court has the discretion to deny a postconviction motion without a hearing based on any one of the three factors enumerated in ***Nelson [v. State***, 54 Wis.2d 489, 195 N.W.2d 629 (1972).][1]

Id. at 310-11, 548 NW.2d at 53 (citations omitted).

In this case the trial court, in its written decision denying Grimes's postconviction motion, correctly concluded that Grimes failed to offer anything more than conclusory allegations with respect to some of his claims, and that the record resolved the others. Contrary to Grimes's assertion on appeal that he was informed incorrectly about the State's offer, the plea colloquy confirms the voluntariness of his plea and his understanding of the State's recommendation.[2] No evidentiary hearing was required.

By the Court. – Judgment and order affirmed.

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[1] In ***Nelson v. State***, 54 Wis.2d 489, 195 N.W.2d 629 (1972), the supreme court stated that:

> if the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusionary allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing.

Id. at 497-98, 195 N.W.2d at 633.

[2] Although, in his postconviction motion, Grimes raised several other points related to alleged ineffective assistance of counsel, he has not presented them in his appeal. Further, although in his brief to this court Grimes asserts "that witnesses' names given his attorney were not followed upon," he fails to offer any argument. Thus we decline to further address his ineffective assistance claim. Arguments in appellate briefs must be supported by authority and references to the record, RULE 809.19(1)(c) & (3)(a), STATS., and we need not consider arguments that do not comply, ***Murphy v. Droessler***, 188 Wis.2d 420, 432, 525 N.W.2d 117, 122 (Ct. App. 1994).

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