COURT OF APPEALS
DECISION
DATED AND RELEASED

May 6, 1997

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, STATS.

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

Nos. 96-1165-CR & 96-1166-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KIEMONTE LAMONT KING,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Kiemonte Lamont King appeals from two judgments of conviction for possession with intent to deliver cocaine, contrary to §§ 161.16(2)(b)(1) and 161.41(1m)(cm)(1), STATS. He argues that police stopped and searched him illegally and, therefore, that the trial court erred in denying his motion to suppress evidence. He further argues that the trial court erroneously

exercised its sentencing discretion by imposing a sentence that is unduly harsh. This court affirms.

The facts are undisputed. On May 4, 1995, at 4:35 p.m., Milwaukee police obtained a search warrant for 3738 North 6th Street. The warrant authorized a search of both the premises and all persons on the premises. The warrant was executed at 6:50 a.m. on May 5, 1995. As Detective Jeffrey Padovano approached the premises he saw King and another man leave the house, walk to and then enter a car parked on the street in front of the house. Padovano detained King, handcuffed him and searched him. In King's left pant pocket Detective Padovano found a plastic bag containing ten smaller plastic bags, each containing a white, chunky rock-like substance, which subsequently tested positive for the presence of cocaine base.

After the trial court denied his suppression motion, King pled guilty to possession with intent to deliver cocaine. He also pled no contest to another similar offense for which he had been arrested five months earlier. He was sentenced to consecutive prison terms of twenty-four months and thirty-two months.

King argues that because "the search warrant empowered" the police "to only search persons and property at the [3738 N. 6th Street] residence," and because Detective Padovano "did not have probable cause to believe that [he] was participating in any criminal activity," the seized evidence should have been suppressed. We disagree.

Where, as in this case, the facts are undisputed, the trial court's determination of the constitutionality of the "stop and frisk" presents issues subject to *de novo* review. *See* ***State v. Richardson***, 156 Wis.2d 128, 137-38, 456 N.W.2d

830, 833 (1990). To be constitutional, the police conduct must be reasonable under the totality of the circumstances. ***Id.*** at 139, 456 N.W.2d at 834. We conclude that Detective Padovano's stop and search of King were reasonable.

In ***Michigan v. Summers***, 452 U.S. 692 (1981), police detained and later searched an individual who was "descending the front steps" of a house where police were about to execute a search warrant. ***Id.*** at 693. The court held that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." ***Id.*** at 705. As the State correctly argues:

> Here, as in ***Summers***, the police had a search warrant to search a premises—and persons on that premises—for contraband.... Here, as in ***Summers***, the police encountered a person leaving the target premises scant moments before the warrant was to be executed. Here, as in ***Summers***, the police were entitled to detain King "while a proper search [was] conducted." 452 U.S. at 705. In King's case, since the warrant authorized a search of people on the target premises, a proper search would reasonably and necessarily include a search of King's person.

King offers no authority to support his implicit proposition that merely by stepping off the property to enter his car he somehow suspended the police authority to stop and search him. Because Padovano saw King leave the house to enter his car, the police had authority to detain King and search him incident to executing the search warrant.

Next, King argues that his prison sentence is excessive and shocks the public conscience because "this lengthy prison sentence term could likely have a negative impact on rehabilitation by putting his release too distant in the future." He contends that "the trial court focused too heavily on the nature of [his]

conviction for these charges and not on the need for rehabilitation." Again, we reject King's claim.

Appellate review is tempered by a strong policy against interfering with the sentencing discretion of the trial court. ***State v. Larsen***, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The trial court is presumed to have acted reasonably, and the defendant bears the burden of showing unreasonableness from the record. ***State v. Echols***, 175 Wis.2d 653, 681-82, 499 N.W.2d 631, 640, *cert. denied,* 510 U.S. 889 (1993). In reviewing whether a trial court erroneously exercised sentencing discretion, we consider whether the trial court considered the 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). The primary factors to be considered by the trial court are the gravity of the offense, the character of the offender, and the need to protect the public. ***Larsen***, 141 Wis.2d at 427, 415 N.W.2d at 541**.** An erroneous exercise of discretion occurs if the trial court fails to state on the record the factors influencing the sentence or if too much weight is given to one factor in the face of contravening factors. ***Id.*** at 428, 415 N.W.2d at 542.

King has failed to show that the trial court's exercise of discretion was erroneous. He was sentenced to prison terms totaling fifty-six months; the potential total was twenty years. The trial court reasonably based its determination on factors including King's young age, the fact that he had committed "two very serious felonies" in the brief time since reaching adulthood, the type of offenses and the amount of cocaine he possessed, his lack of character reflected by his failure to avoid drugs after his first offense, his positive and negative attributes as described in the presentence report, and the sentences of other offenders in similar cases. Under these circumstances, a fifty-six month

period of incarceration is not excessive. *See* ***State v. Daniels***, 117 Wis.2d 9, 22, 343 N.W.2d 411, 417-18 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.").

By the Court.—Judgments affirmed.

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