COURT OF APPEALS DECISION DATED AND RELEASED

May 6, 1997

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. 96-3622-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD S. SEVERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

WEDEMEYER, P.J.[1] Ronald S. Severson appeals from a judgment entered after he pled guilty to driving under the influence of an intoxicant, contrary to §§ 346.63(1)(a) and 346.65(2), STATS. He also appeals from an order denying his postconviction motion seeking sentence modification. He claims the trial court erroneously exercised its sentencing discretion when: (1) it refused to

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

allow him to wear an electronic bracelet in lieu of spending time in the House of Correction; and (2) it suspended his driver's license. Because the trial court did not erroneously exercise its sentencing discretion, this court affirms.

I. BACKGROUND

On February 9, 1991, while Severson was driving on the expressway, a police officer pulled him over because he was "weaving." Severson had a breath alcohol concentration of .23 grams of alcohol per 210 liters of breath. He was arrested and charged with operating a vehicle while under the influence of an intoxicant. Severson pled guilty. He was sentenced to seventy-five days in the House of Correction with work release privileges, a fine of $500, and suspension of his driver's license for fifteen months.

Severson filed a postconviction motion seeking sentence modification. The motion was denied. He now appeals.

II. DISCUSSION

Severson claims that the sentence he received was excessive. He argues that the trial court should have sentenced him to electronic bracelet surveillance and should not have suspended his driver's license. This court's review when a defendant challenges his sentence is limited to a two-step inquiry. This court first determines whether the trial court properly exercised its discretion in imposing the sentence. ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984). If so, this court then considers whether that discretion was erroneously exercised by imposing an excessive or unduly harsh sentence. ***Id.***

The trial court must consider three primary factors when imposing sentence: (1) the gravity of the offense; (2) the character and rehabilitative needs

of the offender; and (3) the need to protect the public. ***State v. Echols***, 175 Wis.2d 653, 682, 499 N.W.2d 631, 640, *cert. denied*, 510 U.S. 889 (1993). The weight afforded to each factor is left to the discretion of the trial court. ***State v. Thompson***, 172 Wis.2d 257, 264, 493 N.W.2d 729, 732 (Ct. App. 1992). This court has reviewed the sentencing transcript and concludes that the trial court did not erroneously exercise its discretion in imposing sentence. The transcript reflects that the trial court considered the three primary factors.

The trial court was particularly concerned with the high blood-alcohol level when it considered the seriousness of the offense and the need to protect the community. It also considered Severson's character, noting that he had a "clear criminal history." The trial court was also made aware of Severson's noble attempts to account for his crime by seeking counseling and voluntarily not driving for two years. The trial court apparently found that the severity of the offense and the need to protect the community factors outweighed Severson's positive character. It also apparently felt that license suspension was necessary despite the fact that Severson voluntarily chose not to drive for two years. Under these circumstances, this court cannot find that the trial court erroneously exercised its discretion in imposing sentence.

Having concluded that the trial court properly exercised its sentencing discretion, this court now examines whether the sentence imposed was excessive. Severson claims that the sentence is cruel and unusual because the seventy-five days to be spent in the House of Correction will greatly inconvenience him and may cause him to lose his job.

This court will not find that the sentence imposed by the trial court was excessive or unduly harsh unless "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." ***State v. Dietzen***, 164 Wis.2d 205, 213, 474 N.W.2d 753, 756 (Ct. App. 1991) (citation omitted). This court cannot say that the sentence imposed by the trial court satisfies this standard. As noted by the trial court:

> many people in our community are injured or killed by [drunk driving]. This is a densely populated county, therefore, the chances that someone who is operating a vehicle while under the influence of an intoxicant will hurt someone or hurt himself or the occupants of his own car are fairly high.

A seventy-five-day sentence for driving under the influence, especially with a BAC of .23, does not "shock public sentiment." Further, the trial court granted Severson work release privileges and even allowed for him to serve his time in Jefferson or Waukesha County to make travel to his job more convenient. Accordingly, this court rejects Severson's claim that the sentence imposed was cruel and unusual.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.