

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

July 17, 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.

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

**Nos. 97-0221-CR
97-0222-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY C. MILLER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
MICHAEL NOWAKOWSKI, Judge. *Affirmed.*

DYKMAN, P.J.¹ Jeffrey Miller appeals from an order denying his postconviction motion for reduction of a three-year sentence for battery and a

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

ninety-day sentence for disorderly conduct.² Miller contends that the trial court erroneously exercised its discretion when it imposed maximum consecutive sentences for each conviction. We conclude that the sentences were properly within the trial court's discretion and therefore affirm.

BACKGROUND

Following an altercation with his girlfriend, Debra Blake, at his home on June 11, 1995, Miller was arrested and charged with disorderly conduct. The court released Miller on bail and ordered him not to have contact with Blake.

On June 14, 1995, Miller was again arrested following an altercation with Blake at the Echo Tavern. This time, Miller was charged, as a repeat offender, with disorderly conduct, two counts of battery and two counts of bail jumping for violating the conditions of his earlier bail.

In exchange for dismissal of the two bail jumping charges and one battery charge, Miller pleaded no contest to the remaining charges. The court sentenced Miller to nine months in jail for the June 14, 1995 disorderly conduct charge and withheld sentence and placed him on three years' probation for the June 11, 1995 disorderly conduct charge and three years' probation for the June 14, 1995 battery charge, with terms to run concurrent. Again, the court ordered Miller to have no contact with Blake unless approved by his probation officer.

² Case No. 97-0221-CR is Miller's appeal from his disorderly conduct conviction, while Case No. 97-0222-CR is his appeal from his battery conviction. We consolidated Miller's two appeals because the cases were consolidated during sentencing and postconviction proceedings.

On April 26, 1996, the Department of Corrections revoked Miller's probation because he had contact with Blake, absconded from jail and consumed alcoholic beverages, in violation of the terms of his probation. The court sentenced Miller to the maximum term of three years in prison on the June 14, 1995 battery charge and, consecutively, to the maximum term of ninety days in prison on the June 11, 1995 disorderly conduct charge. Miller filed a motion for sentence modification, arguing that the consecutive maximum sentences were unduly harsh. The trial court denied the motion, and Miller appeals.

DISCUSSION

Miller argues that the court erroneously exercised its sentencing discretion because the consecutive maximum sentences were unduly harsh and unconscionable. Our review of a trial court's sentencing is limited to determining whether there was an erroneous exercise of discretion. *State v. Harris*, 119 Wis.2d 612, 622, 350 N.W.2d 633, 638 (1984). The primary factors the trial court must consider in imposing sentences are the gravity of the offense, the character of the offender, and the need to protect the public. *McCleary v. State*, 49 Wis.2d 263, 276, 182 N.W.2d 512, 519 (1971). The weight to be attributed any of these factors is for the trial court to determine in the exercise of its judicial discretion. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). A trial judge has discretion to impose as many sentences as there are convictions and may provide that any such sentence be concurrent or consecutive. *Cunningham v. State*, 76 Wis.2d 277, 284, 251 N.W.2d 65, 68-69 (1977). A trial judge in an aggravated case and in the exercise of proper discretion could impose a maximum sentence, and that discretion would be sustained by this court. *See McCleary*, 49 Wis.2d at 290, 182 N.W.2d at 526. Where the defendant challenges a sentence as

excessive, he bears the burden of establishing that it is unjustified or unreasonable. *See Elias v. State*, 93 Wis.2d 278, 281, 286 N.W.2d 559, 560 (1980).

The trial court considered the gravity of Miller's offense. It determined that Miller's criminal acts, which were committed in front of his son, were aggravated. The trial court also considered Miller's character. It noted his failed rehabilitation record, his drug and alcohol use, his lighthearted courtroom demeanor and his continual disregard for the law. Miller had been convicted nineteen times in the past seven years. He had two convictions for escape, two for carrying a concealed weapon, one for criminal damage to property, eight for disorderly conduct, and four for battery. Two of the battery and three of the disorderly conduct convictions involved Blake.

Finally, the court considered the reasons why Miller posed a danger to the public. He had threatened people and injured their property. He had physically harmed two individuals with whom he supposedly had a loving relationship. One of those relationships produced a son, who the court considered an innocent victim of these offenses.

Miller argues that the court gave too much weight to his prior criminal record and his pending battery charge. We disagree. First, the trial court considered a multitude of legally significant factors, not just Miller's criminal record, in imposing its sentence. Second, the trial court specifically stated that it did not rely on the pending battery charge as a basis for sentencing, except to the extent that it related to a behavior pattern that created Miller's character.

In sentencing Miller, the court considered all the legally significant factors. It imposed sentences within the range established by the legislature for these crimes. It articulated the basis for the sentences imposed and its reasons for

applying them consecutively. Therefore, we conclude that the sentences were not unjustified or unreasonable and that the court did not erroneously exercise its sentencing discretion.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.

