

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 11, 2000

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2101-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PATRICIA A. MCTAVISH,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Price County: DOUGLAS T. FOX, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Patricia McTavish appeals from that portion of the judgment sentencing her to four days in jail as a condition of probation after being convicted of possessing a controlled substance (THC), contrary to WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

§ 961.41(3g)(e). She also appeals from the trial court's order denying her motion to modify the sentence. Her sole contention on appeal is that the trial court erroneously exercised its sentencing discretion when articulating no reason for jail time other than an increase in the maximum penalty from thirty days to six months for the offense of possessing a controlled substance. The judgment and order are affirmed.

¶2 McTavish was a passenger in a car that was stopped for speeding. The driver was arrested and because of circumstances not relevant to this appeal, the car was searched. In the course of the search, a deputy sheriff found marijuana and a pipe in McTavish's backpack. After being originally charged with possession of THC and drug paraphernalia and, pursuant to a plea bargain, McTavish entered a no contest plea to the THC possession charge and the drug paraphernalia charge was dismissed. The district attorney recommended that the court withhold sentence and place her on probation with the condition that she serve four days in jail, along with a fine, suspension of her driver's license for six months and undergo an AODA assessment.

¶3 Sentencing is committed to the discretion of the sentencing court, and this court's review is limited to determining whether there was an erroneous exercise of discretion. *See State v. J.E.B.*, 161 Wis. 2d 655, 661, 469 N.W.2d 192 (Ct. App. 1991). Appellate review is conducted in light of the strong public policy against interference with that discretion. *See id.* Thus, this court begins with the presumption that the trial court acted reasonably and the appellant must show some unreasonable or unjustifiable basis in the record for the sentence complained of. *See State v. Petrone*, 161 Wis. 2d 530, 563, 468 N.W.2d 676 (1991).

¶4 Inherent in the sentencing court's exercise of discretion is a consideration of numerous factors. However, the weight to be accorded to particular factors in sentencing is for the sentencing court, not the appellate court, to determine. *See id.* The basic factors the sentencing court should consider in imposing a sentence are the gravity of the offense, the character of the offender and the need for protection of the public. *See State v. Paske*, 163 Wis. 2d 52, 62, 471 N.W.2d 55 (1991). Additional relevant factors may include: the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the defendant's remorse and cooperativeness; the results of the presentence investigation; the nature of the crime; the degree of the defendant's culpability; the defendant's age, educational background and employment record; and the defendant's need for close rehabilitative control. *See State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984).

¶5 Here the trial court addressed the gravity of the offense when noting that the legislature had increased the penalty from thirty days to six months. However, it was not the only factor considered by the court. It observed that the marijuana she possessed was more than a trace, which it considered as an aggravating factor. It also noted that although McTavish had no prior convictions, she appeared to lack any remorse or appreciate the wrongfulness of her possessing marijuana and drug paraphernalia. The court considered the district attorney's recommendation and although it generally followed a guideline of five days in jail for this type of an offense, it reduced the jail time based on mitigating factors. In light of this record, this court is satisfied that the trial court did not consider any improper factors in exercising its sentencing discretion. It considered the various factors and gave appropriate weight to each of them. Therefore, this court is

satisfied that the trial court reasonably exercised its sentencing discretion when imposing the four-day jail sentence as a condition of the probation.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

