

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2004AP1400-CR

Cir. Ct. No. 2003CF3578

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DWAYNE E. HUDSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Dwayne E. Hudson appeals from a judgment convicting him of one count of possessing one gram or less of a controlled substance (cocaine) with intent to distribute. Hudson also appeals from the circuit court's order denying his postconviction motion for resentencing. Because we

conclude that the circuit court did not erroneously exercise discretion at Hudson's sentencing, we affirm.

¶2 Hudson entered a guilty plea to the charge, stipulating to the criminal complaint as the factual basis for the plea and conviction. At sentencing, Hudson's counsel argued for a 30-month sentence, to be served consecutively to a sentence Hudson was already serving. Hudson's counsel recommended that the sentence be split between fifteen months of initial confinement and fifteen months of extended supervision. The State argued for a consecutive sixty-month sentence, consisting of thirty months of initial confinement followed by thirty months of extended supervision. The circuit court ultimately followed the State's recommendation.

¶3 Hudson's postconviction motion argued that the circuit court erred during sentencing when it failed to explain why it imposed a consecutive sentence rather than a concurrent sentence and failed to identify and discuss the minimum custody standard. The motion also argued that the court failed to adequately explain each component of the bifurcated sentence. The circuit court denied the motion and Hudson appeals.

¶4 Hudson contends that *State v. Hall*, 2002 WI App 108, 255 Wis. 2d 662, 648 N.W.2d 41, adopted a preference for concurrent sentences and that the circuit court violated this preference by failing to adequately explain the imposition of a consecutive sentence on Hudson. We disagree. *Hall* does not stand for such a narrow proposition. Its holding is broader: it requires sentencing decisions to demonstrate a process of reasoning linked to a logical rationale sufficient to justify a consecutive sentence. *Id.*, ¶17.

¶5 Here, the court noted that Hudson was on supervision for a prior felony conviction when he was arrested for the crime underlying this case. The crime underlying this appeal was a new offense, wholly unconnected to the crimes underlying Hudson’s supervision. The sentencing transcript discloses the court’s focus on Hudson’s violent criminal history—including prior convictions for battery, endangering safety, use of a dangerous weapon, possession of a firearm by a felon, possession of marijuana, and carrying a concealed weapon—and the destructive impact of his drug-dealing on the community. Although the circuit court did not directly link those factors to its imposition of a consecutive sentence, the overarching concern of the court is implicit in this aspect of the sentence imposed. We conclude that the circuit court provided ample explanation for imposing a consecutive sentence in this case.

¶6 Hudson complains next that the circuit court erroneously exercised discretion at his sentencing when it failed to adequately discuss the minimum custody standard. We disagree. A circuit court is obligated to impose the minimum custody that comports with gravity of the offense and the court’s obligation to protect the public and address the rehabilitative needs of the defendant. *State v. Gallion*, 2004 WI 42, ¶44, 270 Wis. 2d 535, 678 N.W.2d 197. Here, the circuit court explained at sentencing that it was imposing a sentence intended to punish Hudson for his crime, to protect children and adults from the pernicious effects of his illegal drug dealing and, simultaneously, to provide Hudson the structure and supervision necessary for him to turn his life around. The failure of the circuit court to state “magic words” like minimum custody necessary does not render the circuit court’s exercise of sentencing discretion invalid. *See id.*, ¶49.

¶7 Hudson’s third and final argument, also predicated on his reading of *Gallion*, is that the circuit court erred at sentencing by failing to address with specificity how the length of each component of Hudson’s sentence advanced the court’s sentencing goals. Again, we disagree. The court explained in detail the reasons for which the sentence was imposed, the objectives the court hoped to achieve through its sentence, and the facts relevant to its objectives. The sentence imposed was linked to facts in the record and relevant sentencing factors. *Id.*, ¶23. *Gallion* does not require mathematical precision of the kind *Hudson* demands here. *Id.*, ¶49. Accordingly, we reject this argument.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

