

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 6, 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. 2004AP2808-CR

Cir. Ct. No. 2003CF3347

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK ANTHONY SOLORIO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH and MICHAEL B. BRENNAN, Judges. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Mark Anthony Solorio appeals from a judgment of conviction for physical abuse of a child, in violation of WIS. STAT. § 948.03(2)(a)

(2003-04).¹ He also appeals from an order denying his postconviction motion. He raises one claim of error: that the trial court erroneously exercised its sentencing discretion. Because the trial court did not erroneously exercise its sentencing discretion, we affirm.

BACKGROUND

¶2 On June 3, 2003, Solorio was caring for his four-month-old daughter, T.A.S.-S. At approximately 10:45 p.m., Solorio picked her up and shook her because she would not stop crying. She then went back to sleep until 3:45 a.m., when she woke up crying. Solorio picked her up again and shook her. Again, at 7:45 a.m., she was crying and he picked her up and shook her. He then noticed that her head fell forward and her forehead struck his collarbone. T.A.S.-S. was subsequently treated at Children's Hospital for shaken baby syndrome. Her treating physician noted a recent subdural hemorrhage in her brain as well as moderate to severe cerebral edema. The physician indicated that if T.A.S.-S. had not been treated promptly, she probably would have died. He also stated that it is likely that the child will be severely retarded and blind as a result of the injuries.

¶3 Solorio was charged with one count of physical abuse of a child. He pled guilty. The trial court imposed a sentence of four years of initial confinement and five years of extended supervision. Solorio's postconviction motion seeking relief from his term of incarceration was denied. He now appeals.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

ANALYSIS

¶4 Solorio’s only claim is that the court erroneously exercised its discretion when it sentenced him to four years of initial confinement and five years of extended supervision. His claim is based on the contentions that the trial court: (1) failed to state on the record factors influencing its decision; (2) failed to specify why a near-maximum sentence was appropriate; (3) failed to consider that the near-maximum sentence is so excessive and disproportionate to the offense that it would shock the public; and (4) failed to consider mitigating factors and probation. In reviewing this claim, we note that our review is limited. Sentencing lies within the discretion of the trial court.

¶5 “On appeal, review is limited to determining if discretion was erroneously exercised.” *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Because the trial court is best suited to consider relevant factors, there is a strong public policy against interference with the sentencing discretion of the trial court. *Id.*, ¶18. The appellate court strongly presumes that the trial court reasonably exercised its sentencing discretion. *Id.* Because of this presumption, the challenger has the burden “to show some unreasonable or unjustifiable basis in the record for the sentence at issue.” *State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998).

¶6 The three primary factors that a court must address in exercising its sentencing discretion are: “(1) the gravity of the offense, (2) the character and rehabilitative needs of the offender, and (3) the need for protection of the public.” *State v. Sarabia*, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984). The weight to be given each of these factors is also within the sentencing court’s discretion. *State v. Larsen*, 141 Wis. 2d 412, 428, 415 N.W.2d 535 (Ct. App. 1987).

¶7 The trial court has discretion to determine the length of the sentence within the permissible statutory range. *Hanson v. State*, 48 Wis. 2d 203, 207, 179 N.W.2d 909 (1970). “As long as the trial court considered the proper factors and the sentence was within the statutory limitations, the sentence will not be reversed unless it is so excessive as to shock the public conscience.” *State v. Owen*, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996).

¶8 Solorio claims the court failed to state on the record the factors influencing its decision. We reject Solorio’s contention. The trial court clearly considered the three primary factors outlined in *Sarabia*. The record shows that the trial court placed great weight on the gravity of the offense, noting the extensive and permanent injuries the child victim suffered. The trial court looked at the character of the defendant and found several troubling aspects, such as a lack of remorse and a failure to acknowledge responsibility. The trial court also considered the need for protection of the public, finding that Solorio had alcohol and anger management issues which could lead to future acts of violence. The trial court did state the factors influencing its decision.

¶9 Solorio also claims the trial court failed to explain why it chose to impose a near-maximum sentence. We reject this characterization. Intentional physical abuse of a child that causes great bodily harm is a Class E felony. WIS. STAT. § 948.03(2)(a). The maximum sentence for a Class E felony is fifteen years of imprisonment. WIS. STAT. § 939.50(3)(e). Solorio’s sentence is only for a total of nine years or only sixty percent of the maximum sentence. The sentence was well within statutory limits and not a near-maximum sentence.

¶10 Solorio further claims that the near-maximum sentence is so disproportionate that the sentence would shock the public. First, the sentence was

not near-maximum. Second, given the severity of the permanent injuries suffered by the victim, the trial court did not feel the sentence was either disproportionate or shocking. Neither do we.

¶11 Finally, Solorio claims the trial court failed to consider mitigating factors and probation. As stated previously, the trial court considered the three primary factors for sentencing discretion outlined in *Sarabia*. The record clearly shows the trial court considered all aspects of Solorio's character, including possible positive, mitigating aspects. The trial court did not consider probation given the severe permanent injuries the victim suffered.

¶12 Based on the foregoing, we cannot conclude that the trial court erroneously exercised its discretion in sentencing Solorio to four years of initial confinement and five years of extended supervision.

By the Court.—Judgment and order affirmed.

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

