COURT OF APPEALS DECISION DATED AND FILED

September 20, 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. 2004AP2062-CR

Cir. Ct. No. 2003CF3267

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER LLOYD ROBINSON,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Christopher Lloyd Robinson appeals from a judgment entered after he pled guilty to one count of possession of a controlled substance (cocaine) with intent to deliver, contrary to WIS. STAT.

§§ 961.16(2)(b)1. and 961.41(1m)(cm)1g. (2003-04).[1] He also appeals from an order denying his postconviction motion. Robinson claims the trial court erroneously exercised its sentencing discretion when it failed to articulate a specific reason for imposing a consecutive sentence and finding Robinson ineligible for the Challenge Incarceration Program. Because the trial court did not erroneously exercise its sentencing discretion, we affirm.

BACKGROUND

¶2 On June 4, 2003, at approximately 3:45 p.m., Milwaukee Police Officer Timothy Bandt was pursuing an automobile being driven by Robinson. Robinson stopped the vehicle and exited on the driver's side. Bandt observed Robinson drop a bag containing a white chunky substance from his right hand to the ground and then kick the bag under the parked vehicle. Bandt recovered that bag, which contained sixteen individually packaged quantities of what appeared to be, and later was confirmed to be, cocaine.

¶3 Robinson gave a statement to police acknowledging that he had bought the drugs already bagged into twenty dime bags of crack cocaine, and intended to sell them.

¶4 Robinson was charged with possession with intent to deliver and reached a plea agreement with the State. He agreed to plead guilty. The State recommended a six-year prison term, but made no recommendation as to whether this sentence should be made concurrent or consecutive to the sentence Robinson

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

was then serving.[2] Defense counsel requested a three-year concurrent sentence. The trial court imposed a three-year sentence, with two years of initial confinement, followed by one year of extended supervision. This sentence was to be served consecutive to the May 2001 sentence.

¶5 Robinson filed a postconviction motion challenging the consecutive nature of the sentence because he felt the trial court had failed to articulate a specific reason for ordering him to serve this sentence consecutively, rather than concurrently. The motion also alleged that the trial court had failed to exercise discretion concerning Robinson's eligibility for the Challenge Incarceration Program. The trial court denied the motion by written order. Robinson now appeals.

DISCUSSION

¶6 As noted, Robinson raises two issues challenging the trial court's exercise of sentencing discretion. Our review of these issues is limited. There is a consistent and strong policy against interference with the discretion of the trial court in passing sentence. ***State v. Paske***, 163 Wis. 2d 52, 61-62, 471 N.W.2d 55 (1991) (citing ***McCleary v. State***, 49 Wis. 2d 263, 281, 182 N.W.2d 512 (1971)). This policy is based on the great advantage the trial court has in considering the relevant factors and the demeanor of the defendant. ***State v. Harris***, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). Furthermore, "the trial court is presumed to have acted reasonably, and the burden is on the appellant to 'show some

[2] Robinson was on probation from a May 2001 conviction of possession of cocaine with intent to deliver. As a result of this violation, Robinson's probation was revoked and he was ordered to serve the remainder of the 2001 sentence, which was thirty-three months.

unreasonable or unjustifiable basis in the record for the sentence complained of.'" ***State v. Thompson***, 172 Wis. 2d 257, 263, 493 N.W.2d 729 (Ct. App. 1992) (citation omitted). A trial court's sentence is reviewed for an erroneous exercise of discretion. *See* ***Paske***, 163 Wis. 2d at 70.

¶7 It is similarly well established and undisputed by the parties in this case, that trial courts must consider three primary factors in passing sentence. Those factors are "the gravity of the offense, the character and rehabilitative needs of the defendant, and the need to protect the public." ***Paske***, 163 Wis. 2d at 62 (citing ***State v. Sarabia***, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984)). The weight to be given to each of the factors is a determination particularly within the discretion of the trial court. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). After consideration of all relevant factors, the sentence may be based on any one of the three primary factors. ***State v. Krueger***, 119 Wis. 2d 327, 338, 351 N.W.2d 738 (Ct. App. 1984).

¶8 Because the trial court is in the best position to determine the relevant factors in each case, we allow the trial court to articulate a basis for the sentence on the record and then require the defendant to attack that basis by showing it to be unreasonable or unjustifiable. ***State v. Echols***, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

¶9 The exercise of a sentencing court's discretion requires a demonstrated process of reasoning based on the facts of the record and a conclusion based on a logical rationale. ***McCleary***, 49 Wis. 2d at 277. The trial court must engage in an explained judicial reasoning process and provide the reasons for its actions. However, even if the trial court fails to adequately set forth its reasons for imposing a particular sentence, the reviewing court will not set

aside the sentence for that reason. ***Id.*** at 282. The reviewing court is "obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained." ***Id.*** at 282.

¶10 Here, Robinson complains only that the trial court failed to sufficiently explain why it imposed a consecutive sentence and found him ineligible for the Challenge Incarceration Program. The trial court addressed each of these complaints in its written order denying the postconviction motion:

> In this instance, the court considered the offense to be one of "accommodation possession," meaning that the defendant wasn't dealing in large amounts of money. Although the court found the offense severity to be intermediate, the court found the defendant's risk assessment to be high. The court's view of the defendant was dominated by the fact that he was placed on probation for dealing cocaine in 2001, and that he had committed the instant offense during the probation period. The 2001 case also carried a concealed weapons conviction (a loaded .9 millimeter handgun). The court did not need to explain the obvious dangers that drug dealing and weapons presented to the community.
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> The defendant's combination of drug dealing and weapons in 2001, and his commission of the same type of drug offense in 2003 while on probation for the previous offense demonstrated that he presented an increased risk to the community. Consequently, the court believed that a consecutive sentence was the only appropriate disposition.… In sum, the court finds that it appropriately considered the McCleary factors and that it did not erroneously exercise its discretion in making its sentencing decision. Too, the court rejects the defendant's claim that the court erroneously exercised its discretion in finding him ineligible for CIP. The defendant was not a candidate for this program based upon what the court observed about his character and the risk he presented to the community.

¶11 The trial court provided adequate reasons to support its actions. The imposition of the consecutive sentence and the denial of the Challenge Incarceration Program, therefore, did not constitute an erroneous exercise of

discretion. We adopt the trial court's postconviction order as our own. *See* WIS. CT. APP. IOP VI(5)(a) (Oct. 14, 2003).

By the Court.—Judgment and order affirmed.

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