

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 25, 2000

Cornelia G. Clark  
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. 00-0062-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**STANLEY LINDSEY,**

**DEFENDANT-APPELLANT.**

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

¶1 CURLEY, J.<sup>1</sup> Stanley Lindsey appeals from the judgment of conviction and from the order denying his postconviction motion for sentence reduction. Lindsey was convicted after he pled guilty to two separate counts of

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

disorderly conduct, contrary to WIS. STAT. § 974.01.<sup>2</sup> The trial court sentenced Lindsey to the maximum term of incarceration on each count, to be served consecutively. On appeal, Lindsey argues that the trial court erroneously exercised its sentencing discretion. This court affirms.

### **I. BACKGROUND.**

¶2 On December 16, 1998, Lindsey was charged with one count of knowingly violating a domestic abuse injunction. Then on February 5, 1999, he was again charged with a separate count of knowingly violating a domestic abuse injunction. Both charges constitute violations of WIS. STAT. §§ 813.12(4) & (8). The cases were subsequently joined for trial.

¶3 On April 6, 1999, pursuant to a plea agreement, the State amended the charge in each case to disorderly conduct contrary to WIS. STAT. § 947.01, and Lindsey pled guilty to both counts. The trial court sentenced Lindsey to the maximum, ninety days consecutive, on each count. The court also ordered Lindsey to pay a \$1000 fine on or before April 6, 2000. In the event Lindsey failed to pay the fine by the prescribed date, the court ordered an alternative sentence of 120 days on each count. Lindsey filed a notice of intent to pursue postconviction relief and the trial court stayed his sentence.

¶4 Lindsey filed a postconviction motion to modify his sentence. The motion was heard on November 30, 1999, and again on December 10, 1999. Pursuant to a stipulation between Lindsey and the State, the trial court granted relief as to the fine imposed and also granted work release privileges on the

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

balance of Lindsey's sentences. However, the trial court denied Lindsey's request for a modification of the length of the sentences. The trial court also lifted the stay and ordered Lindsey to begin serving his ninety-day sentences on or after January 3, 2000. Lindsey then filed a motion for continued stay of his sentences pending appeal, which the trial court granted on January 3, 2000.

## II. ANALYSIS.

¶5 On appeal Lindsey argues that the trial court erroneously exercised its sentencing discretion by failing to adequately consider the proper sentencing factors. When imposing sentence, the trial court should consider three primary factors: the gravity of the offense, the character of the offender and the need for public protection. *See State v. Sarabia*, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984). Lindsey argues that, in imposing the maximum jail sentence on each count, the trial court focused exclusively on Lindsey's character ignoring the other relevant factors. This court disagrees.

¶6 Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *See State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). A strong policy exists against interfering with the trial court's discretion in determining sentences. *See Sarabia*, 118 Wis. 2d at 673. When sentencing, however, there must be evidence that discretion was in fact exercised and the basis of that exercise of discretion should be set forth. *See McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). "Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of the record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded

upon proper legal standards.” *Id.* Based on the record, this court is satisfied that the trial court properly exercised its discretion in sentencing Lindsey.

¶7 Lindsey argues that “[t]he sentencing court placed an undue emphasis on the character of the defendant, which was not supported by the gravity of the offense.” Lindsey asserts that certain comments made by the trial court during sentencing demonstrate that the court placed undue weight on his perceived character and failed to consider the other relevant sentencing factors. Specifically, during sentencing, the court described Lindsey as a “bad guy” and a “skunk.” The trial court also commented on the length of the sentence, saying, “I wish I could give you more time.” Further, the trial court stated that Lindsey is “one really bad, bad guy, who’s manipulated the system.” Based on these comments, Lindsey concludes that the trial court focused on his character without considering the other factors and, therefore, it erroneously exercised its sentencing discretion. Lindsey’s argument is rejected by this court.

¶8 A review of the record reveals that the trial court considered the necessary sentencing factors. Clearly, the trial court did place particular emphasis on Lindsey’s character. However, the weight to be given to any one sentencing factor is a determination particularly within the trial court’s wide discretion. *See Harris v. State*, 75 Wis. 2d 513, 520, 250 N.W.2d 7 (1977). This court is satisfied that the trial court did not place undue emphasis on Lindsey’s character, but rather, it considered his character in conjunction with the other relevant sentencing factors.

¶9 The record indicates that at sentencing, the trial court considered other relevant sentencing factors. In considering the nature of the offense, the court relied upon the criminal complaint, as well as a lengthy statement from the

victim. The trial court noted at sentencing that on two separate occasions, Lindsey telephoned the victim and became verbally abusive, in violation of the domestic abuse injunctions. The victim also testified regarding other incidences of physical and verbal abuse that Lindsey inflicted upon her. After listening to the victim, the trial court asserted that anything less than the maximum sentence would “unduly depreciate the seriousness of the offense.” Further, although the trial court did not specifically consider the need to protect the public, it did consider Lindsey’s criminal record and his history of undesirable behavior. *See, e.g., Harris*, 119 Wis. 2d 612 at 623-24 (setting forth the primary factors, as well as additional factors courts could consider in sentencing, including the defendant’s past criminal record and history of undesirable behavior). Lindsey’s criminal record contains prior convictions for theft, escape and obstructing an officer, as well as a history of batteries and disorderly conducts that did not result in convictions. *See, e.g., State v. Von Loh*, 157 Wis. 2d 91, 97, 458 N.W.2d 556 (Ct. App. 1990) (sentencing court may consider defendant’s prior conduct that did not result in a conviction). Lindsey also had a prior charge for battery involving the same victim, which was dismissed. *See id.* For all these reasons, this court is satisfied that the trial court considered the relevant sentencing factors and, therefore, properly exercised its discretion in sentencing Lindsey to the maximum term of incarceration.

*By the Court.*—Judgment and order affirmed.

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

