

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 16, 2006

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. 2005AP1989-CR

Cir. Ct. No. 2004CF4268

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

HOSEA WILDER,

DEFENDANT-APPELLANT.

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

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Hosea Wilder appeals a conviction for second-degree recklessly endangering safety and an order denying his motion for postconviction relief. The issues are whether the trial court erroneously exercised

its sentencing discretion, ordered restitution on insufficient evidence, and erroneously denied postconviction relief from the sentence. We affirm.

¶2 The complaint charged Wilder in connection with an incident in which he slashed the face of Robert Davis with a sharp object. Wilder subsequently entered a guilty plea to the charge. The court sentenced Wilder to a five-year prison term, stayed the sentence, and placed him on probation for four years with one year in jail as a condition of probation.

¶3 In sentencing Wilder, the court considered a videotape of the incident, a presentence investigation report, the victim's written statement, and the arguments of counsel. The videotape showed that Wilder approached the victim and slashed him without provocation. The cut to the victim was deep enough to slash an artery, and in a crime victim impact statement Davis described permanent damage to his face. The PSI presented Wilder's version of the incident and described his past criminal record, his employment history, his history of alcohol abuse, and his recent efforts to obtain treatment for alcoholism. On the issue of restitution, the court had a restitution worksheet Davis prepared, claiming \$150 for clothing and shoes ruined by blood stains, and \$850 for a bicycle, with lock and cable, lost on the night of the assault.

¶4 The trial court's primary considerations in sentencing Wilder included the unprovoked nature of the attack; the seriousness of the victim's injuries, both physical and emotional; Wilder's history of domestic violence; his failure to appreciate or take sufficient responsibility for his attack on Davis; his poor adjustment to prior probations; his alcoholism; the connection between his drinking and his violent acts; and his poor employment history in recent years. Regarding restitution, the court asked for the defendant's response to Davis's

restitution claim, and counsel responded, stating, “pay it.” Consequently, the court granted restitution in the amount claimed, \$1000.

¶5 We review sentencing decisions under the erroneous exercise of discretion standard. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Strong public policy exists against interfering with the trial court’s sentencing discretion, and we presume the trial court acted reasonably. *State v. Wickstrom*, 118 Wis. 2d 339, 354, 348 N.W.2d 183 (Ct. App. 1984). A proper exercise of sentencing discretion requires a rational and explainable basis for the sentence. *Gallion*, 270 Wis. 2d 535, ¶76. In addition, a defendant has a constitutional due process right to a sentence based upon materially accurate information. *State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998). A defendant alleging that the trial court relied on inaccurate information must show that the information was inaccurate and that the circuit court actually relied on the inaccuracies. *Id.* Whether a constitutional deprivation has occurred due to inaccurate information is a question of law we review de novo. *State v. Groth*, 2002 WI App 299, ¶21, 258 Wis. 2d 889, 655 N.W.2d 163.

¶6 Wilder first contends that the trial court erred by failing to give sufficient weight to mitigating factors, resulting in an excessive sentence. However, the trial court’s decision to accord more weight to the aggravating factors and less to the mitigating factors is within its discretion. *See State v. Jones*, 151 Wis. 2d 488, 495, 444 N.W.2d 760 (Ct. App. 1989). The severity of the victim’s wounds, the unprovoked nature of the attack, Wilder’s criminal record, and the connection between his alcohol abuse and violent behavior are all factors supporting a significant prison sentence. In any event, the trial court evidently gave some consideration to mitigation in its decision to stay the prison sentence and place Wilder on probation.

¶7 Wilder next contends that the trial court sentenced him on inaccurate information. First, he asserts that the court mistakenly believed that Wilder did not take sufficient responsibility for the offense. However, the court's opinion on this question was a matter of interpretation, not one of factual inaccuracy. The record includes statements from Wilder suggesting that Davis had provoked and threatened Wilder for a long time, and that Wilder was afraid of him. The trial court could reasonably interpret those statements as attempts to minimize responsibility.

¶8 Second, Wilder asserts that the court erroneously described him as unemployed for the last five years when during that time he occasionally worked through a temp agency and had been temporarily employed as recently as ten months before sentencing. Again, the trial court's description of him as "basically unemployed" is a matter of interpretation. We understand the court to be accurately saying that there is no indication that Wilder has had any significant employment. In any event, after the court described him as "basically unemployed," Wilder was allowed to clarify matters by explaining his temp agency work, and the court acknowledged that explanation. Additionally, there is no indication of record that the distinction between "occasionally employed" and "basically unemployed" played any part in the sentencing decision.

¶9 Third, Wilder disputes the trial court's characterization of him as an alcoholic in denial and averse to treatment. However, the trial court had no obligation to accept Wilder's self-serving descriptions of his attitude toward drinking and treatment for it.

¶10 Fourth and finally, Wilder contends that the trial court erred by exaggerating the victim's injuries. As proof, he cites a letter from someone he

identifies as Davis's girlfriend claiming that Davis exaggerated his injuries and was not seriously hurt in the attack. However, the letter is dated more than two weeks after sentencing. At the sentencing hearing the court relied on the victim's description of his own injuries, which Wilder did not dispute. Wilder cannot reasonably fault the trial court for an "inaccuracy" based on information received after sentencing.

¶11 Wilder also contends that the trial court failed to adequately explain the objectives and purpose of the five-year prison term. However, Wilder demands more from the trial court than the law requires. "[T]he exercise of discretion does not lend itself to mathematical precision." *Gallion*, 270 Wis. 2d 535, ¶49. The court need not explain why it chose a sentence of a particular length, and need only provide explanation for the general range of the sentence imposed. *Id.* Here, the trial court provided a rational and explainable basis for treating this as "a significant prison case." And, as it must, the court addressed the gravity of the offense, the character of the offender, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The trial court therefore fulfilled its obligation to provide a reasoned sentencing decision.

¶12 Wilder next challenges the restitution order. When the issue of restitution arose, counsel stated, "pay it." We construe that as an affirmative stipulation to the amount claimed. Even if it were not, a defendant's failure to object to restitution claimed at sentencing is a constructive stipulation. *See State v. Hopkins*, 196 Wis. 2d 36, 43-44, 538 N.W.2d 543 (Ct. App. 1995). We will not reverse a stipulated restitution award. *See id.*

¶13 Finally, Wilder contends that the court should have granted his postconviction motion and reduced his sentence because of the various inaccuracies identified and discussed above. However, as we have held, Wilder failed to demonstrate that the court did, in fact, rely on inaccuracies in sentencing him. Nor has he demonstrated that the court, in its discretion, was required to accept as true the unverified allegations received after sentencing concerning the extent of Davis's injuries.

By the Court.—Judgment and order affirmed.

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

