

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2001

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.

**Nos. 00-0732-CR
00-1270-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

REGINALD D. MOORE,

DEFENDANT-APPELLANT.

APPEALS from a judgment and an order of the circuit court for Dane County: RICHARD J. CALLAWAY, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Reginald Moore appeals from a judgment sentencing him, after revocation of his probation, to five years in prison for bail jumping. He also appeals from the order denying his motion for sentence

modification. He claims the trial court erroneously exercised its discretion because it failed to adequately explain the sentence that it imposed. He also argues that the sentence was impermissibly based on uncharged and unproven conduct and violated his right to due process of law. We resolve these arguments against Moore and affirm the trial court's judgment and order.

¶2 As has often been stated, we will sustain a sentencing decision unless the trial court erroneously exercises its discretion. *State v. Mosley*, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). In framing its sentence, the trial court must consider the nature of the offense, the character of the offender, and the need to protect the public. *Id.* at 43-44. The trial court may also consider a number of related, secondary factors relevant to the decision, including the defendant's past record of criminal offenses, the defendant's history of undesirable behavior, the defendant's personality, character and social traits, the results of the presentence investigation, and the defendant's demeanor. *State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984).

¶3 Moore first argues that the trial court did not adequately explain why it imposed the maximum sentence. He points to sentences received in Dane County by other persons convicted of bail jumping within the last four years, noting that he received the harshest sentence despite the fact that his bail jumping charge stemmed from missing a court appearance, not from any violent or criminal behavior.

¶4 Although the statistics to which Moore cites show a disparity in treatment, we cannot say the trial court's explanation of its decision to impose the maximum sentence was so inadequate as to provide no basis for the disparate treatment. The trial court was in the best position to consider all of the factors

bearing on Moore's sentence, including his past conduct before the court and his demeanor. Statistics do not show whether the other offenders had Moore's history of involving himself in violent episodes, failing to appear in court, failing to comply with the terms of probation, and using drugs, factors upon which the trial court relied in imposing sentence. We therefore reject Moore's argument.

¶5 Moore next argues that the trial court impermissibly based his sentence on uncharged and unproven conduct, rather than the actual offense for which he was convicted. A sentencing court may consider a defendant's pattern of conduct as indicative of a defendant's character, even when it is not criminally charged. *State v. Von Loh*, 157 Wis. 2d 91, 95, 458 N.W.2d 556 (Ct. App. 1990). The trial court acted properly in considering Moore's pattern of behavior because it had bearing on his need for a more structured environment than probation could provide.¹

¶6 Finally, Moore argues that his due process rights were violated because he was sentenced based on inaccurate, uncorroborated, and unreliable information. See *United States ex rel. Welch v. Lane*, 738 F.2d 863, 864 (7th Cir. 1984) (a defendant's right to be free from arbitrary government action encompasses the right to be sentenced on the basis of accurate information). Moore's counsel waived this argument during postconviction proceedings, so we will not consider it on appeal. See *State v. Divanovic*, 200 Wis. 2d 210, 226, 546 N.W.2d 501 (Ct. App. 1996).

By the Court.—Judgment and order affirmed.

¹ We agree with Moore, however, that it would have been preferable if the trial court had discussed the crime for which Moore was being sentenced at greater length.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5 (1999-2000).

