COURT OF APPEALS
DECISION
DATED AND FILED

May 2, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2656-CR **Cir. Ct. No. 2003CF4909**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY MARK CARAVELLA,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Anthony Mark Caravella pled guilty to three counts of homicide by intoxicated use of a motor vehicle. The circuit court imposed sentences of twenty years' imprisonment on each count, with Caravella to serve a minimum of twelve years in initial confinement on each charge. Because

the circuit court ordered the sentences to run consecutively, Caravella must serve thirty-six years in initial confinement. Caravella filed a postconviction motion in which he sought a new sentencing hearing. He argued that the circuit court failed to exercise sentencing discretion properly. The circuit court denied Caravella's motion, and this appeal follows. Because the record demonstrates that the circuit court properly exercised sentencing discretion, we affirm the judgment of conviction and postconviction order.

¶2 Caravella and a friend had purchased and drank beer and were driving to the north side of Milwaukee late one evening. They continued to drink beer while they traveled, and Caravella, who was driving, steadily increased their speed until they were traveling eighty-to-ninety miles per hour and running stop signs on a busy residential street. At least one witness saw Caravella run no fewer than two stop signs and then, as he was running another sign, a car entered the intersection and Caravella's car smashed into it. A four-year-old child was ejected from the car and thrown forty feet. The child's parents were trapped in the car. Although neither Caravella nor his friend were seriously injured, all three people in the car Caravella struck died before reaching the hospital. Caravella cooperated with the police investigation, and tests of his blood indicated a blood-alcohol concentration of .129, a level substantially exceeding the legal limit. Other tests indicated that at impact, Caravella was traveling almost seventy miles per hour, the victims were traveling the speed limit, and there was no sign of braking by either vehicle.

¶3 In exchange for his guilty pleas, the State agreed to refrain from making a specific sentencing recommendation other than to request "substantial prison time." Caravella, for his part, recognized that the seriousness of his actions required a prison sentence of some length.

¶4 At a lengthy and emotional sentencing hearing, the circuit court heard not only from the State, the defense, and the defendant himself, but also from the families of both the victims and the defendant. In its initial comments, the circuit court addressed the families of the victims, sympathizing with them and attempting to help them understand the criminal process and reconcile them to it. The circuit court then turned its attention to the defendant noting that "a judge must sentence an individual based on the crimes themselves, the Defendant's character, and the interests of the community for protection."

> Now, as to the crimes themselves, this is the worst crime there is. There's no wors[e] crime. Shooting somebody dead versus stabbing them to death with a knife versus crashing into them with a car, that you can't drive correctly because you're drunk and have drugs in your system – It's all the same in the sense that the result is the same. Someone, in here three someones, are dead.
>
> … I believe … Tony Caravella did not get up on the morning of August 22nd and intend to kill anybody, much less these three people. I agree. But by drinking as much as you did and continuing to drive that car, knowing how drunk you were, knowing how impaired you were, you knew it. You knew it.
>
> By doing that at such high rates of speed, so reckless, you did cause the death of three people. So it was your decision … to drink that killed them. It was your decision to get behind the wheel of a car and drive once you were that drunk, that impaired that you could not safely handle that car, and you cared nothing for your safety, for your passenger's safety, and for the safety of anybody else on the street, on the road.
>
> And that complete reckless lack of caring turned that – and your drunkenness turned that car into a weapon of destruction. So these are very serious crimes. [There]'s really no other way we can talk about it honestly.
>
> As to your character, I see a number of things. I see a very needy young man for all kinds of reasons. And the complexity of your needs makes me sad. I see nonetheless that you're not an evil person, you are not a bad person. In fact your family says that your heart is a good heart, that

> you're a hard worker, that you have had the decency not to make excuses. You have had [the] decency to accept responsibility, fully on your young shoulders, for the tragedy that you've caused.
>
> I agree with your attorney there's a vulnerability there that I'm concerned about. I appreciate that you cooperated with the police once you were off the scene or away from the scene. I appreciate that you pled guilty because that's more evidence that you accept responsibility for your horrible actions and their horrible results.
>
> Lastly I look at the interests of the community to be protected from crime, particularly this crime, to be killed by a drunk driver. I could only shake my head because I don't know how many times I can sentence someone for these crimes, and still the message does not get out in this community that you cannot drive while impaired. You cannot drive drunk safely.
>
> It's only by the grace of God if you drive drunk that you don't cause exactly this tragedy. People who die, not right away, who had to suffer first and then die. It's everyone's nightmare, but yet again, this sentence does serve the purpose of deterring not only you personally, but the community of Milwaukee as a whole, because all of us, not just the families [of the victims] suffer when a member of our community kills them.
>
> It's not just the families that suffer, all of us are hurt in some measure when we lose good citizens like these two individuals who were doing the right things with their lives, doing the right things with their child, did nothing to deserve this kind of a death.
>
> I'm going to put a prison sentence in place because there's a need to punish, and there's a need to deter and to recognize the seriousness of these crimes. I appreciate that an 18-year-old boy who's newly 18, who's fairly recently licensed, who's not a bad person, presents a more vulnerable defendant than does someone who's 40 or 50, has lived a life of 30 or 40 more years than you have, but the result is still the same. Three people are dead.

At that point the circuit court imposed consecutive twenty-year prison sentences, with Caravella to serve twelve years on each sentence in initial confinement.

¶5 As we have already noted, Caravella filed a postconviction motion asking the circuit court to "vacate his sentence and grant him a new sentencing hearing." Essentially, Caravella argued that the circuit court had erroneously exercised sentencing discretion by failing to state adequate reasons for the length of his sentences and also in running those sentences consecutively rather than concurrently. He argued that, under ***State v. Gallion***, 2004 WI 42, ¶28, 270 Wis. 2d 535, 678 N.W.2d 197, with the advent of truth-in-sentencing in Wisconsin, "the judiciary's responsibility for ensuring a fair and just sentence has significantly increased." Caravella maintained that the circuit court had failed to articulate on the record the reasons for the particular sentences and the need to run the sentences consecutively -- in the words of ***Gallion*** at ¶42 to "explain, in light of the facts of the case, why the particular component parts of the sentence imposed advance the specified objectives."

¶6 The circuit court denied the motion, reasoning that in sentencing Caravella, it had complied with ***McCleary v. State***, 49 Wis. 2d 263, 182 N.W.2d 512 (1971), the case on which ***Gallion*** relies and that ***Gallion*** revitalizes.[1] It noted that it had considered the appropriate sentencing factors, and had imposed consecutive lengthy sentences because the "exceptional severity" of Caravella's actions had taken three lives. The court observed that the sentences were "tailored to meet the primary objectives of punishing the defendant and deterring similar behavior" by Caravella in particular and the public in general. It pointed out that as long as it had complied with the requirements of ***McCleary*** when it imposed

[1] *See* ***State v. Stenzel***, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20 ("while ***Gallion*** revitalizes sentencing jurisprudence, it does not make any momentous changes").

sentence, it was not required to explain why it had not imposed other possible sentences. This appeal follows.

¶7 The standard of appellate review is well-settled. The circuit court has great discretion in imposing sentence. *See*, *e.g.,* ***State v. Wickstrom***, 118 Wis. 2d 339, 354-55, 348 N.W.2d 183 (Ct. App. 1984). This court will affirm a sentence imposed by the circuit court if the facts of record indicate that the circuit court "engaged in a process of reasoning based on legally relevant factors." *See* ***id***. at 355 (citations omitted). The primary factors for the sentencing court to consider are the gravity of the offense, the character of the offender, and the public's need for protection. ***State v. Larsen***, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). This court will sustain a circuit court's exercise of discretion if the conclusion reached by the circuit court was one a reasonable judge could reach, even if this court or another judge might have reached a different conclusion. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). This court is extremely reluctant to interfere with the circuit court's sentencing discretion given the circuit court's advantage in considering the relevant sentencing factors and the demeanor of the defendant in each case. *See* ***State v. Echols***, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993). Even in instances where a sentencing judge fails to properly exercise discretion, this court will "search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained." ***McCleary***, 49 Wis. 2d at 282.

¶8 In ***Gallion***, the supreme court reaffirmed the ***McCleary*** sentencing analysis, which cited the importance of the sentencing court's consideration of "the nature of the offense, the character of the offender, and the protection of the public interest." ***McCleary***, 49 Wis. 2d at 274 (citation omitted). ***McCleary*** also emphasized the importance of the sentencing court's exercise of discretion.

> It is thus clear that sentencing is a discretionary judicial act and is reviewable by this court in the same manner that all discretionary acts are to be reviewed.
>
> In the first place, there must be evidence that discretion was in fact exercised. Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards…. [T]here should be evidence in the record that discretion was in fact exercised and the basis of that exercise of discretion should be set forth.

Id. at 277 (citation omitted).

¶9 ***Gallion*** requires the trial court to explain the "linkage" between the sentence and the sentencing objectives. ***Gallion***, 270 Wis. 2d 535, ¶46. Although ***Gallion*** did not change the standard of review, "appellate courts are required to more closely scrutinize the record to ensure that 'discretion was in fact exercised and the basis of that exercise of discretion [is] set forth.'" ***Id.***, ¶76 (quoting ***McCleary***, 49 Wis. 2d at 277).

¶10 On appeal, Caravella renews his postconviction arguments that the circuit court failed to articulate adequately the reasons for the sentences imposed and for ordering the sentences to run concurrently. He argues in particular that ***Gallion*** requires a more detailed and nuanced sentencing analysis than that displayed in the sentencing transcript.

¶11 Although the ***Gallion*** standard affirming the need for specific sentencing remarks technically does not apply to this case,[2] we are satisfied that

[2] Caravella was sentenced prior to the release of ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. The supreme court indicated that ***Gallion*** applied to future cases only. ***Id.***, ¶8.

the circuit court's sentencing remarks nonetheless meet that standard. The circuit court discussed the main ***McCleary*** factors and applied them to the facts of this case. The court clearly considered the serious consequences of Caravella's decision to drive while impaired as the most significant factor in imposing lengthy and consecutive sentences. It noted that Caravella was a young man with a "complexity of … needs," who had nonetheless accepted responsibility for his actions and appeared truly remorseful. The circuit court indicated that it was Caravella's acceptance of responsibility that moved it away from imposing maximum sentences. It noted, however, that the interests of the community – and the need to send the community the message that drunk driving would not be tolerated – required lengthy sentences. The circuit court imposed consecutive sentences because, even though Caravella's act of driving recklessly while drunk was a single act, it nonetheless resulted in the tragic deaths of three people. Thus, the circuit court gave the required explanation "for the general range of the sentence imposed. *See* ***Gallion***, 270 Wis. 2d 535, ¶49. Even though this court might have imposed different sentences in this instance, we may not substitute our judgment for that of the trial court. *See* ***id.***, ¶18.

By the Court.—Judgment and order affirmed.

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