COURT OF APPEALS
DECISION
DATED AND FILED

May 2, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2654-CR **Cir. Ct. No. 2004CM7988**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES V. ROYSTER,

DEFENDANT-APPELLANT.

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

¶1 WEDEMEYER, P.J.[1] Charles V. Royster appeals from a judgment and an order entered after pleading guilty to one count of issuing a worthless check, as a habitual criminal, contrary to WIS. STAT. §§ 943.24(1) and 939.62

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

(2003-04).[2] Royster requests only that the order be vacated and he be resentenced. He claims that the trial court erroneously exercised its sentencing discretion when it sentenced him to the maximum term of confinement based on the trial court's mistaken belief that the check involved here of $600 was a large amount of money. Because the trial court did not erroneously exercise its sentencing discretion, this court affirms.

BACKGROUND

¶2 On April 28, 2004, Royster gave the victim, Marlene Shortridge, a check bearing the name "Charles V. Casey, Jr." in the amount of $600. In exchange, Shortridge gave Royster (whom Shortridge knew as Charles Casey for approximately three months), $350 cash and a personal check for $250. Shortly thereafter, Royster cashed the $250 check. When Shortridge deposited the $600 check at her bank, it came back to her with the language "Account Closed" stamped on the face of the check.

¶3 Royster was charged with issuing a worthless check as a result of this incident. He was also charged with habitual criminality. Royster pled guilty to the charge on January 18, 2005. On February 16, 2005, a sentencing hearing took place. The State recommended a sentence of two years, one year of initial confinement and one year of extended supervision. Defense counsel asked the court to follow the State's recommendation, but to make the sentence concurrent to the sentence Royster was then serving. The trial court imposed the sentence recommended by the State, but made it consecutive to the sentence Royster was

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

then serving. Judgment was entered. Royster filed a postconviction motion seeking sentence modification, which was denied by written order. Royster now appeals.

DISCUSSION

¶4 Royster seeks only vacatur of the order and re-sentencing. He contends the trial court erroneously exercised its sentencing discretion. Specifically, he objects to the trial court's comments that the facts here showed a certain amount of sophistication by Royster and that the $600 check was a relatively large amount of money. Royster claims both statements were irrational and constituted inaccurate information relied on at sentencing. In reviewing a sentencing challenge, this court's review is limited.

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

¶6 It is similarly well established 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. ***Id.*** at 62. The weight to be given to each of the factors, however, 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).

¶7 The sentencing court may also consider additional factors including,

> the defendant's criminal record, history of undesirable behavior patterns, personality and social traits, results of a presentence investigation, the aggravated nature of the crime, degree of culpability, demeanor at trial, remorse, repentance and cooperativeness, educational and employment history, the need for close rehabilitative control and the rights of the public.

State v. Lewandowski, 122 Wis. 2d 759, 763, 364 N.W.2d 550 (Ct. App. 1985).

¶8 Finally, a sentence is unduly harsh only if the length of the sentence imposed by a trial court "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas***, 70 Wis. 2d at 185.

¶9 There is no argument that the trial court failed to consider the proper sentencing factors. Rather, Royster claims the trial court's comments regarding sophistication and the large amount of money involved were inaccurate and demonstrated a failure to exercise discretion to justify such a long sentence. The trial court addressed both contentions in its order denying the postconviction motion:

> The defendant argues that the court erred when it stated that the amount of money involved ($600) was "relatively large" because he would have faced the same penalty for uttering a check of up to $2,500. He also contends that the court erred in stating that the crime was sophisticated by

> the form of money paid by the victim. The court rejects both of these claims. The fact that the legislature has prescribed the same maximum penalty for issuance of a worthless check in any amount up to $2,500 does [not] make the amount of money involved in a particular case irrelevant or preclude the court from considering this factor among other relevant sentencing factors in determining an appropriate sentence. Although $600 was not the maximum amount prescribed by the statute, the court did not err in considering this amount to be "relatively" large, nor was the court precluded from imposing the maximum sentence for this offense based upon the other relevant sentencing factors. The court's assessment of the crime as sophisticated was a minor consideration among these factors and did not significantly influence the court's sentencing decision.

This court, in reviewing the sentencing transcript and the trial court's reasoning set forth above, concludes that the trial court did not erroneously exercise its discretion when it imposed sentence, nor did the trial court rely on inaccurate information or make "irrational" findings. The trial court's explanation here is reasonable. There is nothing that states a trial court can only impose the maximum penalty if the dollar amount is the maximum under the statute. Here, there were a variety of other factors supporting the trial court's imposition of the maximum sentence, including Royster's prior criminal conduct and the fact that he committed this crime while on supervision from a prior conviction.

¶10 Royster also contends that the trial court failed to provide a sufficient reason for imposing the maximum sentence/minimum custody standard as required by ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. This court rejects Royster's contention.

¶11 A review of the transcripts in this case demonstrates that the trial court did sufficiently explain the reason it felt the maximum sentence was required. The trial court addressed the gravity of the offense—noting that the

habitual criminality penalty enhancer makes the case far more serious than had it been a first offense. The trial court explained that the case was aggravated by Royster's character and criminal history, stating:

> In looking at the defendant's character, he's only 22 years old, and he has a conviction in 2000 for escape, a conviction in 2001 for taking and driving, and for that he received 13 months of initial confinement and then 26 months of supervision. That supervision was revoked.
>
> He has a conviction in 2004 for forgery. He has a conviction in 2004 for issuance of [a] worthless check. Now he has this charge, also.
>
> So it's some similar conduct in terms of dishonesty. There's a thread that's running through.

¶12 The trial court also addressed the need to protect the public and why it felt that probation would not be appropriate in this case: "In looking at the need to protect the public, I think that simply placing the defendant on probation would unduly depreciate the seriousness of this offense under all of the circumstances that I have been indicating." The trial court reasoned that a term of confinement was necessary for deterrence. Based on this review, this court cannot conclude that the trial court erroneously exercised its sentencing discretion. It considered the required factors and reached a reasonable determination.

By the Court.—Judgment and order affirmed.

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