

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 9, 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. 2004AP2724-CR**

**Cir. Ct. No. 2003CF4288**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROSE MARIE HARTFIELD,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Rose Marie Hartfield pled guilty to two counts of delivering cocaine as a party to a crime and as a second or subsequent offense. She was sentenced to concurrent six-year prison terms that required her to serve a minimum of two years in initial confinement and a maximum of four years on

extended supervision. Hartfield filed a postconviction motion in which she argued that the circuit court at sentencing had provided primarily “a sentencing explanation [that] consisted of standard boilerplate language regarding the societal harm caused by the proliferation of narcotics,” instead of the particularized sentencing determination to which she was entitled. The circuit court denied the motion, and Hartfield now appeals. Because we conclude that the record demonstrates that the circuit court considered the appropriate sentencing factors and exercised discretion in applying those factors to the facts of this case, we affirm.

¶2 Hartfield, who had a prior conviction for possessing marijuana, was involved in selling cocaine to an undercover Milwaukee police officer. Hartfield’s son, who was also involved in selling drugs, was charged along with her. Hartfield pled guilty to the charges in exchange for a favorable sentencing recommendation from the State.

¶3 As Hartfield claims, the circuit court at sentencing placed heavy emphasis on the social harms of drug dealing, noting that the court must consider “the interest of society” in punishing people who violate the law as a means of deterring future crimes by the defendant and others. After noting the mandatory sentencing factors it must apply,<sup>1</sup> the circuit court delineated the maximum penalties it could impose, given the amount of cocaine seized by police. Specifically, it noted that the first count carried a maximum ten-year sentence, with a maximum five-year term of initial confinement, and that the second count

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<sup>1</sup> See *State v. Larsen*, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987) (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).

provided for a twelve-and-one half-year sentence with a maximum of seven-and-a-half years of initial confinement. The court also noted that the maximum term of initial confinement in each case could be increased by four years due to the second-or-subsequent-offense enhancer.

¶4 The circuit court then turned its attention to “what drugs are doing throughout our community.”

They’re destroying individuals, ... families, [and] children. And so many of the other crimes we see in court every day are drug-related crimes. And you mention your [daughter] and you’re worried about child care for her. Well, I’m worried about your [daughter].

....

And I’m worried about all the kids in the community because what drugs are doing to them. And you’re out selling drugs. And when you deal drugs, you prey upon so many people throughout the community and principally the children.

The court continued to comment on the problems drugs had caused to families and children in general, noting the effects parental addiction have on childcare and education, which lead to the destruction of neighborhoods and community violence. Finally, the circuit court commented on Hartfield’s prior marijuana conviction.

¶5 Hartfield filed a postconviction motion in which she argued that the circuit court had failed to sufficiently apply the requisite sentencing factors to her case and articulate the reasons underlying the imposed sentences. The circuit court denied the motion, rejecting Hartfield’s argument that it had used primarily “boilerplate” language. The court noted that its comments regarding the effects of drug-dealing on the community arose from its experiences on a special drug court that offered the daily opportunity to witness the “ravages” of drug-trafficking and

drug use on the community. It noted that the record demonstrated that Hartfield was not a “mere facilitator of [drug] sales,” but had been involved in “multiple drug transactions that also involved her son” and another young man “who considered her like a mom.” The circuit court noted that it had considered Hartfield’s involvement in selling cocaine and the quantities she had been selling. It noted that, at sentencing, it had concluded that Hartfield needed treatment and that the best place she could obtain it while protecting the public would be in prison.

¶6 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. *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 v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

¶7 In *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 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).

¶8 *Gallion* requires the trial court to explain the “linkage” between the sentence and the sentencing objectives. *Gallion*, 270 Wis. 2d 535, ¶46. Although the standard of review did not change, “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).

¶9 On appeal, Hartfield renews her postconviction argument that the circuit court failed to adequately articulate the reasons for the sentences it

imposed. In support, Hartfield notes that *Gallion* requires a more detailed and nuanced sentencing analysis than the one reflected in the sentencing transcript.

¶10 Although the *Gallion* standard affirming the need for specific sentencing remarks technically does not apply to this case,<sup>2</sup> we are satisfied that 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. Specifically, the circuit court indicated that prison sentences were required due to the seriousness of Hartfield's offenses, the danger to the community those offenses represented, and the likelihood that the crimes would recur absent Hartfield's treatment in a structured setting. It also indicated the importance of demonstrating to the public that offenses such as Hartfield's would be treated seriously and punished. Thus, the circuit court gave the greatest weight to the seriousness of Hartfield's offenses and the need for public protection. The record also demonstrates that the circuit court considered Hartfield's character in regard to her continued drug-trafficking and drug use, and also in regard to her willingness to jeopardize the community through those actions.

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

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

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<sup>2</sup> Hartfield 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.