

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 31, 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. 2004AP2811-CR

Cir. Ct. No. 2002CF4345

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CAROL A. HAYES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Carol A. Hayes appeals from a judgment of conviction for misconduct in public office, and from a postconviction order summarily denying her resentencing motion. The issue is whether the trial court erroneously exercised its discretion by failing to explain why it imposed the

precise sentence it did, which exceeded the parties' joint sentencing recommendation. We conclude that the trial court's consideration of the primary sentencing factors and its explanation for rejecting a concurrent disposition provided a proper exercise of sentencing discretion. Therefore, we affirm.

¶2 Hayes entered a no-contest plea for misconduct in public office, in violation of WIS. STAT. § 946.12(2) (2001-02), for producing false identification cards from documents she misappropriated from her employer, the Milwaukee County Register of Deeds.¹ The parties jointly recommended a forty-two-month sentence, comprised of eighteen- and twenty-four-month respective periods of confinement and extended supervision, to run concurrent to a revocation sentence. The trial court imposed a forty-eight-month sentence, comprised of two twenty-four-month periods of confinement and extended supervision, to run consecutive to Hayes's revocation sentence. Hayes moved for resentencing, which the trial court summarily denied. Hayes appeals.

¶3 Hayes contends that the trial court erroneously exercised its sentencing discretion by failing to explain why it imposed a twenty-four month confinement period, rather than the eighteen-month confinement period jointly recommended by the parties.

When a criminal defendant challenges the sentence imposed by the [trial] court, the defendant has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue. When reviewing a sentence

¹ By entering a no-contest plea, Hayes did not claim innocence, but implicitly acknowledged the sufficiency of the State's evidence to establish her guilt beyond a reasonable doubt. See WIS. STAT. § 971.06(1)(c) (2001-02); see also *Cross v. State*, 45 Wis. 2d 593, 598-99, 173 N.W.2d 589 (1970). The consequences of a no-contest plea are substantially similar to those of a guilty plea. See *State v. Princess Cinema of Milwaukee, Inc.*, 96 Wis. 2d 646, 651, 292 N.W.2d 807 (1980).

imposed by the [trial] court, we start with the presumption that the [trial] court acted reasonably. We will not interfere with the [trial] court's sentencing decision unless the [trial] court erroneously exercised its discretion.

State v. Lechner, 217 Wis. 2d 392, 418-19, 576 N.W.2d 912 (1998) (citations and footnote omitted). The primary sentencing factors are the gravity of the offense, the character of the offender, and the need for public protection. *State v. Larsen*, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The trial court's obligation is to consider the primary sentencing factors, and to exercise its discretion in imposing a reasoned and reasonable sentence. *See id.* at 426-28. The trial court has an additional opportunity to explain its sentence when challenged by postconviction motion. *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

¶4 The trial court initially confirmed that the parties' joint recommendation was for a concurrent sentence. The trial court rejected that recommendation because that would "basically [treat this offense as] a freebie as far as the initial confinement time."²

¶5 The trial court then considered the primary sentencing factors. It characterized this offense as "extremely serious," and explained how "identity theft" has gone "totally out of control." It explained the time, effort, expense and frustration that victims of identity theft must endure to attempt to "clear their records." It then considered Hayes's character, and her "very lengthy record involving crimes of deceit." It was appalled that Hayes obtained government

² Hayes does not challenge the trial court's exercise of discretion in imposing the sentence to run consecutively rather than concurrently.

employment and a position of trust, and wondered if she sought this employment to use sensitive information for private gain. The trial court then explained why it

need[ed] to protect the public and for the public to understand that when this type of abuse of trust goes on that there has to be a significant punishment. And [it] think[s] at this point an example has to be made to the members of our community that the courts don't treat this lightly and that this type of offense requires significant punishment.

In its postconviction order summarily denying resentencing, the trial court further explained that it considered the primary sentencing factors, it was not obliged to explain why it deviated from the parties' joint sentencing recommendation, and it was proper to infer the reasons for the sentence from the record, if even arguably necessary.

¶6 The trial court considered the primary sentencing factors and provided its reasons for the sentence. The trial court is not obliged to explain the reason it imposed the precise amount of confinement it did as long as it explains its reasons for the total sentence as required by *McCleary v. State*, 49 Wis. 2d 263, 277-78, 182 N.W.2d 512 (1971). See also *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 (“no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion”). The trial court's failure to explain specifically why it did not follow the parties' joint sentencing recommendation does not create an erroneous exercise of discretion. See *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) (our inquiry is whether discretion was exercised, not whether it could have been exercised differently). We consequently conclude that the trial court properly exercised its sentencing discretion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT.
RULE 809.23(1)(b)5 (2003-04).

