COURT OF APPEALS
DECISION
DATED AND FILED

March 29, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1679-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY A. HELLMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Vergeront, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Timothy Hellman, pro se, appeals from a judgment convicting him of incest with a child and from an order denying his motion to modify his sentence. Hellman argues that the trial court misused its discretion in sentencing him to prison for fifteen years. We affirm.

¶2 We will affirm a trial court's sentencing decision if the record shows the trial court reached a logical decision based on the facts of record and the appropriate law. ***State v. Avery***, 215 Wis. 2d 45, 56, 571 N.W.2d 907 (Ct. App. 1997). The trial court must consider the gravity of the offense, the character of the offender, and the need for protection of the public. ***Id.*** The trial court may also consider a host of other factors including the defendant's record; the defendant's history of undesirable conduct; the defendant's personality, character and social traits; the presentence investigation report; the aggravated nature of the crime and the defendant's rehabilitative needs. ***Id.*** The weight to be given each factor is committed to the trial court's discretion. ***Id.*** A defendant challenging a sentence imposed by the trial court must show "some unreasonable or unjustifiable basis in the record for the sentence at issue." ***State v. Lechner***, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998).

¶3 Hellman contends the trial court gave too much weight to some considerations and not enough to others. Having reviewed the extensive sentencing transcript, we do not agree. Although Hellman undoubtedly would have preferred that the trial court give more weight to mitigating factors, the trial court discussed the considerations in forming its sentence in a thorough and balanced manner, giving each its due weight. There was no misuse of discretion.

¶4 Hellman contends that the trial court's consideration of his wife's disability was inappropriate.[1] The trial court heard testimony from three witnesses, a pastor, a social worker, and a psychologist about Hellman's character

[1] The record contains very little information about the exact nature of Hellman's wife's disability. The presentence investigation report states that she is learning disabled. Hellman's pastor testified at sentencing that she "was slow in grasping … aspects of life."

and his relationship with others, including his wife. The trial court extrapolated, based on this testimony and information in the presentence investigation report, that Hellman has only had intimate relationships with people who are more vulnerable than himself, thus making him a greater danger to the public. Because this conclusion is one that can be reasonably drawn from the record, there was no misuse of discretion. ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) ("[A] trial court in an exercise of its discretion may reasonably reach a conclusion which another judge … [would] not reach, but it must be a decision which a reasonable judge or court *could* arrive at by the consideration of the relevant law, the facts, and a process of logical reasoning.") (emphasis added).

¶5 Hellman contends his ineligibility for some treatment programs due to the length of his sentence is a "new factor" justifying sentence reduction. A new factor is a fact that was highly relevant to the sentencing court's imposition of sentence, but that the court was not aware of at the time of sentencing. ***Lechner***, 217 Wis. 2d at 419. A new factor "must be an event or development which frustrates the purpose of the original sentence." ***State v. Michels***, 150 Wis. 2d 94, 99, 441 N.W.2d 278 (Ct. App. 1989). Although the trial court noted that Hellman needed sex offender treatment, which Hellman apparently will be able to obtain when he is closer to his release date, the fact that treatment is currently unavailable does not frustrate the trial court's original intent in imposing sentence because the trial court contemplated Hellman receiving treatment both in prison and in a community setting over time and, in any event, Hellman's treatment needs were but a minor consideration in the trial court's decision.

¶6 Finally, Hellman argues that he should not have been charged with incest with a child because his seventeen-year-old daughter was not a child within the meaning of the law. As the State points out, a child is defined as a person who

has not yet attained the age of eighteen, except that a person *accused* of a crime who has obtained the age of seventeen is not a child. WIS. STAT. § 948.01(1) (1999-2000). The State is correct. Hellman appears to concede this argument in his reply brief, so we address it no further.

By the Court.—Judgment and order affirmed.

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