

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 20, 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. 2005AP1767-CR**

**Cir. Ct. No. 2004CF2212**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DEBORAH FAYE GRAY,**

**DEFENDANT-APPELLANT.**

---

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

Before Brown, Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Deborah Faye Gray has appealed from a judgment convicting her of first-degree recklessly endangering safety by use of a dangerous weapon, party to the crime, and sentencing her to a bifurcated sentence of twelve years, consisting of four years of initial confinement and eight years of extended

supervision. She has also appealed from an order denying her motion for resentencing or sentence modification. We affirm the judgment and order.

¶2 Gray's conviction arises from the execution of a plan by Gray and her boyfriend, Victor Chartier, to lure Gray's ex-boyfriend, Todd Lawrence, to Gray's apartment to kill or frighten him. It is undisputed that Lawrence had a lengthy history of stalking and harassing Gray, and that Gray and Chartier were frustrated about the situation.

¶3 According to the complaint, both Gray and Chartier confessed that on March 15, 2004, Gray telephoned Lawrence and invited him to her apartment. Although Gray told Lawrence that she was inviting him over to "party," Gray confessed that the motive was to kill Lawrence, or at least to scare him enough to make him stay away. Gray indicated that before Lawrence arrived, Chartier placed a "trucker's toothpick," or crowbar, and a gun in locations where he could reach them.

¶4 Gray indicated that when Lawrence arrived at her apartment, she closed and locked the door behind him, at which time Chartier hit him with the crowbar. When Lawrence fell, Chartier picked up the gun and shot at him ten times. Some of the bullets or shrapnel grazed Lawrence's clothing, but none directly hit him. Chartier indicated that he initially intended to kill Lawrence, but changed his mind and just wanted to scare him.

¶5 On July 16, 2004, Gray pled guilty to first-degree recklessly endangering safety by use of a dangerous weapon as a party to the crime. She was sentenced the same day to four years of initial confinement and eight years of extended supervision. Lawrence spoke at the sentencing hearing, asking for leniency and stating, among other things, that he still loved Gray. When he made

this statement, the trial court interrupted him, stating that Gray was “smirking when you said that. She smirked and laughed.... [S]he treats it as a joke. I saw the smirk just now when you said that, and she just shook her head like poor soul. That’s how I interpret it.” In response, defense counsel reiterated Lawrence’s history of stalking Gray even after restraining orders were issued against him, contending that, “If there’s any smirk, I think that it’s not a smirk of he’s been played for a loser, I think the idea is that my client didn’t know what to do with him anymore.”

¶6 Subsequently, Chartier also pled guilty to first-degree recklessly endangering safety by use of a dangerous weapon, party to the crime. A nine-year sentence, consisting of four years of initial confinement and five years of extended supervision, was imposed and stayed. Chartier was placed on five years of probation, and was ordered to serve one year in the House of Correction as a condition of probation.

¶7 In sentencing Chartier, the trial court distinguished his situation from Gray’s. In doing so, it referred again to Gray’s demeanor at her sentencing, stating: “I got to see her, listen to her, saw her actions when Mr. Townsend (sic) was speaking which were disgusting.” The trial court indicated that while Lawrence was speaking, Gray was “smirking and laughing.... She was sort of mocking him like, you know, get a life.” It stated that it was “very upset with her attitude and ... involvement.” The trial court also concluded that Gray manipulated Chartier and that she was primarily responsible for the plan to kill Lawrence, despite the fact that Chartier was the actual shooter.

¶8 After Chartier’s sentencing, Gray moved for resentencing or sentence modification, contending that her sentence was inadequately explained, it

rested upon improper considerations, and there were insufficient grounds for the disparate treatment of her and Chartier. The trial court denied the motion without a hearing, concluding that Gray was more culpable than Chartier for planning to kill Lawrence and luring him to her apartment. Based on that factor, “the seriousness of the crime contemplated and what occurred, Gray’s particular character, her failure to appreciate any wrongdoing, and her attitude as displayed in court,” the trial court declined to disturb her sentence. This appeal followed.

¶9 Gray’s first argument on appeal is that her sentence was based upon inaccurate information concerning the extent to which Lawrence stalked her. She alleges that the trial court misinterpreted her attitude at sentencing, contending, as she did in her postconviction affidavit, that her facial expression at sentencing did not result from a lack of remorse, but rather from a continuing frustration with Lawrence for continuing to pursue a relationship with her. She contends that she was intensely uncomfortable as a result of what Lawrence said at sentencing, and fearful that his remarks suggested that his harassment of her might continue. She contends that her facial expression reflected her discomfort, rather than a lack of remorse and a manipulative nature as the trial court assumed. She contends that at a minimum, after the trial court’s assumptions concerning her attitude became clear at Chartier’s sentencing, she was entitled to testify at a postconviction hearing to explain her attitude.

¶10 A defendant who moves for resentencing on the ground that the trial court relied on inaccurate information must establish that there was information before the sentencing court that was inaccurate, and that the trial court actually relied on the inaccurate information. *State v. Tiepelman*, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1. If the defendant meets his or her burden of showing

that the sentencing court actually relied on inaccurate information, the burden shifts to the State to establish that the error was harmless. *Id.*, ¶3.

¶11 Initially, we note that the trial court judge had a first-hand view of Gray's demeanor at sentencing, and is to be commended for describing what he observed on the record rather than simply taking note of it in silence. A trial court is entitled to consider a defendant's demeanor before the court when imposing sentence. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, review denied, 2006 WI 39, 290 Wis. 2d 22, 712 N.W.2d 897. The trial court was entitled to conclude from Gray's demeanor that she did not fully appreciate the wrongfulness or seriousness of her conduct, or feel genuine remorse. It was not required to accept the alternative explanation provided by counsel at sentencing and reiterated by Gray in her postconviction affidavit, indicating that her facial expression resulted from fear and frustration.

¶12 In any event, at sentencing the trial court stated that it believed everything Gray said about Lawrence, including that he was obsessive and would not leave her alone. It stated: "I agree, he was obsessed with her. And drove her ... to the breaking point." It thus recognized Gray's frustration with Lawrence, but concluded that her frustration did not justify the offense or excuse her serious criminal behavior. No basis therefore exists to conclude that the trial court relied on inaccurate information as to the nature of Lawrence's relationship with Gray and its impact on her.

¶13 Gray's next argument is that the trial court erroneously exercised its discretion by speculating that she manipulated Chartier and allocating primary responsibility for the crime to her, even though Chartier engaged in the more aggravated conduct of shooting at Lawrence. She contends that a reduction in her

sentence is warranted in light of the shorter sentence and term of incarceration imposed on Chartier.

¶14 The mere fact that a defendant's sentence is different than that of a co-defendant is insufficient to support a conclusion that it is unduly disparate. *State v. Perez*, 170 Wis. 2d 130, 144, 487 N.W.2d 630 (Ct. App. 1992). The defendant has the burden of establishing that the disparity in the sentences was arbitrary or based upon considerations not pertinent to proper sentencing. *Id.* "Even leniency in one case does not transform a reasonable punishment in another case into a cruel one." *Id.*

¶15 The trial court relied on proper factors in sentencing Gray. In addition, in denying her motion for sentence modification, it provided a reasonable explanation for why her sentence differed from Chartier's sentence.

¶16 When sentencing Gray, the trial court expressly considered the gravity of the offense, noting the seriousness of the crime and that both parties could have been charged with attempted first-degree homicide. In assessing Gray's culpability, it noted that she lured Lawrence to her apartment, and that both she and Chartier intended to kill Lawrence when she called him. It found nothing in the record to support a determination that Gray changed her mind, noting the absence of evidence that Gray used words or actions to try to stop the shooting after it commenced. It also considered Gray's character and the need to protect the public. It noted that Gray had demonstrated a willingness to use violence when pushed beyond her limit and spent most of her allocution talking about how bad Lawrence was, indicating a failure to recognize that even when faced with Lawrence's harassment and obsession, she was not entitled to lure him to her

apartment to kill him. Based upon these factors, it rejected probation and concluded that a long prison term was warranted.

¶17 In denying Gray's postconviction motion, the trial court also provided a reasonable explanation for the difference in the sentences imposed on Gray and Chartier. While noting that neither defendant had a prior criminal record, the trial court concluded that Gray called and lured Lawrence to her apartment, and was more culpable for the plan than Chartier. In conjunction with this determination, it also concluded that Chartier's conduct at the time of the crime reflected an intention to back out of the killing by shooting around Lawrence, noting that Chartier was a marksman who could have hit Lawrence if he had been trying to do so. In contrast, as noted by the trial court at Gray's sentencing, nothing indicated that Gray wanted to withdraw from the plan to shoot and kill Lawrence. Based upon these factors, the factors addressed at Chartier's sentencing,<sup>1</sup> and what the trial court concluded was Gray's poor attitude and failure to fully appreciate the wrongfulness of her conduct, the trial court determined that the disparate treatment of Gray and Chartier provided no basis for relief. Because the trial court relied on reasonable factors in distinguishing Gray's case from Chartier's, no basis exists to disturb its decision.

¶18 Gray's final argument is that the trial court failed to adequately explain the length of the sentence imposed, and its reasons for choosing four years of initial confinement and eight years of extended supervision. We disagree.

---

<sup>1</sup> These included Chartier's lack of a prior criminal record and his successful completion of a drug and alcohol program while awaiting sentencing.

¶19 Sentencing is left to the discretion of the trial court and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. When the proper exercise of discretion has been demonstrated at sentencing, this court follows a strong and consistent policy of refraining from interference with the trial court's decision. *Ziegler*, 289 Wis. 2d 594, ¶22. We afford a strong presumption of reasonability to the trial court's sentencing determination because that court is best suited to consider the relevant factors and demeanor of the convicted defendant. *Id.*

¶20 To properly exercise its discretion, a trial court must provide a rational and explainable basis for the sentence. *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. It must specify the objectives of the sentence on the record, which include, but are not limited to, protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence of others. *Id.* It should indicate which general objectives are of greatest importance and explain how, under the facts of the particular case, the sentence selected advances those objectives. *Ziegler*, 289 Wis. 2d 594, ¶23. It must also identify the factors it considered in arriving at the sentence and must indicate how those factors fit the objectives and influenced the sentencing decision. *Id.*

¶21 The primary sentencing factors that a trial court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Id.* Other factors which may be relevant include, but are not limited to, the defendant's past record or history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation report; the vicious or aggravated nature of the crime; the degree of the defendant's



culpability; the defendant's demeanor before the court; the defendant's age, educational background and employment history; the defendant's remorse, repentance and cooperation; the defendant's need for close rehabilitative control; and the rights of the public. *Id.* The trial court need not discuss all of these secondary factors, but rather only those relevant to the particular case. *Id.* The weight to be given each of the sentencing factors remains within the wide discretion of the trial court. *Stenzel*, 276 Wis. 2d 224, ¶9.

¶22 The “sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *Gallion*, 270 Wis. 2d 535, ¶23. However, in imposing the minimum amount of custody consistent with the appropriate sentencing factors, “minimum” does not mean “exiguously minimal,” or insufficient to accomplish the goals of the criminal justice system. *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483. Moreover, while the trial court must provide its sentencing rationale on the record, a defendant is not entitled to a mathematical breakdown of how each sentencing factor translates into a specific term of confinement. *State v. Fisher*, 2005 WI App 175, ¶¶21-22, 285 Wis. 2d 433, 702 N.W.2d 56, *review denied*, 2005 WI 136, 285 Wis. 2d 628, 630, 703 N.W.2d 378. *Gallion* requires an explanation but not mathematical precision. *See Ziegler*, 289 Wis. 2d 594, ¶25.

¶23 When this court reviews a sentence, we look to the entire record, including the trial court's statements at sentencing and the reasons given by the trial court in denying postconviction relief. *See State v. Santana*, 220 Wis. 2d 674, 683, 584 N.W.2d 151 (Ct. App. 1998). Examining these materials here, we conclude that no basis exists to disturb the sentence.

¶24 As previously discussed, the trial court considered the gravity of the offense, Gray’s character, and the need to protect the public when sentencing her. In assessing Gray’s character, it acknowledged that she had no prior criminal record and had accepted responsibility for this crime by entering a guilty plea. However, it also recognized that she had serious drug or alcohol problems and needs, and that she was the one who lured Lawrence to her apartment by calling him on the telephone. In addition, after listening to Gray’s allocution, it concluded that she “misses the point” that her conduct was unjustified despite Lawrence’s harassing behavior. Based on the seriousness of the offense, its conclusions concerning Gray’s character, and its consideration of the public’s need for protection, the trial court determined that probation was not an option and that a lengthy prison term was required. It then imposed a twelve-year sentence, consisting of four years of initial confinement and eight years of extended supervision, a moderate sentence in light of the potential sentence that could have been imposed.

¶25 The trial court’s failure to give Lawrence’s harassing behavior and Gray’s frustration the weight that Gray wished does not constitute an erroneous exercise of discretion. *See Stenzel*, 276 Wis.2d 224, ¶16. The trial court discussed the relevant sentencing factors and facts and applied them in a reasoned and reasonable manner to fulfill sentencing objectives of protecting the community, punishing Gray, and imposing a sentence that reflected the seriousness of the offense. No basis therefore exists to conclude that it failed to provide an adequate explanation for the sentence.

¶26 As a final matter, we note that in fashioning the appellant’s brief-in-chief and reply brief, Gray’s counsel adopts an acerbic and sarcastic tone leveled

at the trial and appellate courts. This borders on the unprofessional, and detracts from Gray's argument rather than increasing its effectiveness.

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

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

