**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**January 17, 2007**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2005AP26-CR** **Cir. Ct. No. 2001CF1495**

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

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MATTHEW L. SOWINSKI,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARTIN J. DONALD and JEAN W. DIMOTTO, Judges. *Affirmed.*

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

¶1 PER CURIAM. Matthew L. Sowinski, Sr., entered no-contest pleas to charges of theft from a person, aiding a felon as a party to a crime, and delivering fewer than five grams of cocaine as a party to a crime. On the first

count, the circuit court imposed a ten-year prison sentence, with Sowinski to serve a minimum of five years of initial confinement. On the second count, Sowinski received a five-year prison sentence and was ordered to serve a minimum of two years of initial confinement. Finally, on the drug count, Sowinski was given a fifteen-year sentence, of which he was required to serve a minimum of eleven years of initial confinement. The circuit court ordered all sentences to run consecutively. Sowinski sought postconviction relief, arguing that the circuit court erroneously exercised sentencing discretion and imposed unreasonably harsh sentences. The circuit court denied the motion and Sowinski appeals. Because the record demonstrates that the circuit court properly exercised sentencing discretion and did not impose unduly harsh sentences, we affirm the judgment of conviction and postconviction order.

¶2 Sowinski was initially charged with first–degree intentional homicide in the strangulation of Daryl Jones. Sowinski's son, Matthew, Jr., told police that he was driving his father's van, with Jones and his father as passengers. He stated that when Jones fell asleep during the ride, his father strangled Jones. Matthew, Jr., also told police that his father dragged Jones's body into tall grass and that he took crack cocaine, money, and jewelry from Jones.

¶3 Ultimately, Sowinski told police that his son and another man had murdered Jones, but that he had instructed his son to blame him for the crime. He stated that he had been attempting to protect his son. He admitted that he had taken a piece of jewelry from Jones as Jones was sleeping the night before the homicide. Sowinski also told police that Jones had come to his house while he was playing cards with friends and that Jones had given him crack cocaine worth forty dollars. He stated that he used a portion of the cocaine and that he gave the remainder to his friends.

¶4 The State offered Sowinski the plea bargain to which he agreed on the day of trial because new evidence had become available that made it, in the prosecutor's estimate, difficult if not impossible to prove Sowinski's guilt on the homicide charge. The bargain reduced his maximum sentencing exposure to thirty years in prison. Sowinski accepted the plea deal.

¶5 At sentencing, the State, consistent with the terms of the plea bargain, recommended that Sowinski receive consecutive sentences on the first two counts, but a concurrent sentence on the third count. In support of its recommendation, the State noted Sowinski's conviction on a manslaughter charge thirteen years prior, his admission to using drugs, and his participation with his son in attempting to cover up Jones's murder. The presentence investigation report writer viewed Sowinski as attempting to minimize the seriousness of the crimes and to impugn the character of the victim. The report recommended maximum sentences for Sowinski. Sowinski, for his part, asked the circuit court to impose no prison time, noting that he had been attempting to protect his son, from whom he had been estranged for many years. Sowinski noted that at the time he told his son to implicate him in the murder, his son was threatening suicide. He further noted his good work history and his assistance to the elderly and disabled, among other things.

¶6 After the circuit court imposed sentences that, when taken together, approached the maximum, Sowinski filed a postconviction motion in which he argued that the circuit court erroneously exercised discretion by imposing an unduly harsh sentence. More specifically, he maintained that the circuit court failed to adequately explain its imposition of consecutive sentences that approached the maximum allowable imprisonment. At base, Sowinski argued that the circuit court, by considering the seriousness of the underlying homicide,

erroneously exercised discretion. The circuit court denied the motion without a hearing, and Sowinski renews his arguments on appeal.

> When a criminal defendant challenges the sentence imposed by the [circuit] 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 imposed by the [circuit] court, we start with the presumption that the [circuit] court acted reasonably. We will not interfere with the [circuit] court's sentencing decision unless the [circuit] 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).

¶7 A sentence is unduly harsh when it is "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 v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We review an allegedly harsh and excessive sentence for an erroneous exercise of discretion. *See* ***State v. Giebel***, 198 Wis. 2d 207, 220, 541 N.W.2d 815 (Ct. App. 1995).

¶8 When it sentenced Sowinski, the circuit court placed particular emphasis on the nature of the crime Sowinski had been covering up. The court noted that when it took

> into account what really took place and when I try and piece together these three counts in terms of your involvement, what really troubles me in all of this, Mr. Sowinski, is that you for whatever reason either because of an addiction or because of your own defects or characteristics, that you were willing to assist your son and this third person in trying to cover up a murder, a homicide, as if it was nothing more than trying to cover up something as minor as littering on the highway.

¶9 The court continued, noting that Sowinski's willingness to help his son cover up a homicide "out of … love and concern" indicated to the court that Sowinski was "a very dangerous person because it doesn't matter what the consequences are or what has occurred. You will continue to do whatever you want to do when it suits your needs." The court acknowledged the letters of support submitted by Sowinski, which indicated that he had a "side … which appears to be compassionate and at least helpful to people that you know or care about." It continued, however, by observing that it also appeared from the presentence report that Sowinski had a side "which appears to be very shallow, self-centered and manipulative." The circuit court imposed sentence, noting that it was appropriate due to the seriousness of the underlying crime, Sowinski's willingness to minimize the magnitude of the crime, and Sowinski's own prior record.

¶10 These comments demonstrate that the circuit court considered the primary sentencing factors: the seriousness of the crime (helping his son to cover up a murder and drug use); the character of the offender (his prior conviction for manslaughter, his compassion and helpfulness to some, tempered by his shallow,

manipulative and self-centered personality); and the need for public protection (the serious character of the crimes and Sowinski's attempts to cover them up). The record demonstrates that the circuit court considered the required sentencing factors when it imposed sentence.

¶11 In support of his claim that the circuit court imposed unduly harsh and excessive sentences under the circumstances, Sowinski argues primarily that the circuit court's consideration of the seriousness of the homicide underlying the obstruction charge was improper. Although he "concedes that a sentencing court may consider unproven charges in its analysis of the character of the offender," *see* ***State v. Marhal***, 172 Wis. 2d 491, 502, 493 N.W.2d 758 (Ct. App. 1992), he argues that the circuit court placed too much emphasis on the nature of the underlying crime. We disagree.

¶12 As the State notes, the circuit court has the responsibility "to acquire the full knowledge of the character and behavior of the defendant" before sentencing, including "[e]vidence of unproven offenses involving the defendant." ***State v. Fisher***, 211 Wis. 2d 665, 678, 565 N.W.2d 565 (Ct. App. 1997). Here, Sowinski was originally charged with first-degree intentional homicide and robbery, based in large part on Sowinski's son's statement to police. The charges were reduced when, on the eve of trial, Sowinski's son changed his story. The circuit court, at sentencing, considered the homicide noting its relevance "because it puts into context the nature of these offenses, what was going on, and what your involvement was." Although another court might have reasonably reached a different conclusion, the record indicates that the circuit court exercised discretion by considering the relevant law, the facts, and using a process of logical reasoning. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Given the circumstances and nature of the crimes to which Sowinski admitted, we cannot

conclude that the sentences imposed on Sowinski are "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.

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

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