

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 13, 2007

A. John Voelker
Acting 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. 2005AP1199-CR

Cir. Ct. No. 2004CF2017

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CARY A. HAAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Cary A. Haas appeals from a judgment of conviction for forgery, and from a postconviction order denying his motion for sentencing relief. The issue is whether the trial court erroneously exercised its discretion when it purportedly failed to explain the reasons for imposing close to

the maximum sentence for a non-aggravated offense. We conclude that the trial court properly exercised its discretion when it explained precisely how the individualized sentence it imposed satisfied its principal objective, to provide treatment for Haas's admitted drug problem, which was at the root of his unlawful conduct. Therefore, we affirm.

¶2 Haas pled guilty to forgery (uttering), in violation of WIS. STAT. § 943.38(2) (amended Feb. 1, 2003), for forging checks worth \$200 from his mother's bank account. The parties jointly recommended a two-year sentence comprised of two one-year respective periods of confinement and extended supervision to run consecutive to a sentence he was already serving. The trial court instead imposed a forty-two-month concurrent sentence, comprised of thirty- and twelve-month respective periods of confinement and extended supervision, and found Haas eligible for the Challenge Incarceration and Earned Release Programs.

¶3 Haas moved for resentencing or sentence modification, contending that the trial court erroneously exercised its sentencing discretion because: (1) it imposed sentence on an irrational basis, namely it imposed a lengthier sentence to facilitate Haas's access to drug treatment while in prison; and (2) it failed to address the gravity of the offense and the reasons for the duration of the sentence. The trial court denied the motion, explaining that there was no dispute regarding the facts or circumstances of the offense or its severity, thereby not requiring much explanation on that particular sentencing factor, and that Haas expressly requested treatment for his drug problem and a shorter sentence would have essentially deprived him of the prison treatment programs he needed. On appeal, Haas refined his challenge to the trial court's allegedly erroneous exercise of discretion

for failing to explain why it imposed close to the maximum sentence for a non-aggravated offense.

¶4 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 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).

¶5 The primary sentencing factors are the gravity of the offense, the need for public protection, and the character of the offender. *State v. Larsen*, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The weight the trial court assigns to each factor, however, is a discretionary determination. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). 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 *Larsen*, 141 Wis. 2d at 426-28. In doing so, the trial court should explain the linkage between the sentencing objectives and the component parts of the sentence it imposed. See *State v. Gallion*, 2004 WI 42, ¶46, 270 Wis. 2d 535, 678 N.W.2d 197. The trial court has an additional opportunity to explain its sentence when challenged by postconviction motion. See *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

¶6 At sentencing, the prosecutor told the trial court that the victim, Haas's mother, wanted her son prosecuted to stop his drug problem, which he facilitated by stealing. The prosecutor then recited Haas's criminal history and

explained that the joint sentencing recommendation was designed to help Haas get “closer to the right track.” Defense counsel explained that Haas told her that

[he] need[s] to get [his] drug problem under control.

He totally acknowledges the fact that he has drug problems and he believes he would be better doing a prison sentence rather than just a House of Correction sentence or a probation sentence.

And he is the one that told [defense counsel] that what he’s kind of looking at, although the Court cannot order specific programs, he said that he believes that the Nexus Program, which is a drug treatment program in prison, may be something that would be beneficial to him.

¶7 The trial court, in responding to the joint sentencing recommendation of one year in confinement, said that “a year of confinement isn’t going to get [Haas] any program, at least to what [the trial court has] been told about.” Haas responded that he “just figured a year would help [him] out, some type of program. The House of Correction and the county jail ha[ve] none, period.” The trial court responded that

when we talk to people who are running the prison system, they tell us that there are waiting lists for these programs, that people who go in the really short sentences don’t have much chance of getting into any programs.

So [the trial court is] just simply putting that out on the table if [Haas is] serious of wanting [drug treatment] programming.

Defense counsel responded,

Judge, obviously he’s got a drug problem. [Haas] tells me he’s had a coke problem basically since he was 21, from 22 to 23 he had daily use. He said he had quit when he had gone to prison. He had gotten back out, had been using.

He's also got some issues with alcohol, really not – not exactly his drug of choice but he is acknowledging the fact that he's got the problem. He needs to take care of it.

In response to questions from the trial court, Haas responded that he

did go through some programming but it wasn't like – Just like what [the trial court] said, it's so – You know, you go through the Alcoholics Anonymous, like – The wait is so long. By the time you get in there and get out of there, it's –

Haas then told the trial court that he was not able to obtain serious treatment when he previously served less than a two-year prison sentence. Haas responded that the trial court's understanding that a lengthier sentence is necessary to obtain drug treatment in prison “makes a lot of sense.”

¶8 The trial court then explained its sentence.

You apparently have been plagued by this cocaine problem for most of your – or a significant period of your life, and you have a substantial criminal record.

You are here today on a forgery charge. This carries with it a maximum possible penalty of six years. [The trial court] think[s] that's three of confinement, three of extended supervision.

[The trial court] understand[s] that there is a joint recommendation for a year of confinement.

For the reasons that [the trial court] said, it makes no sense to [the trial court] to warehouse you for a year in the prison system. It seems to [the trial court] that if you don't get on top of your cocaine problem, you're going to continue being a danger on into the future as far as the eye can see. There will always be other people from whom you will need to take money in order to support your habit until you've got that under control.

....

[The trial court] do[es] that because [it] think[s] that is the minimum amount of time that is going to be necessary to get you into some programming.

[The trial court] would make you eligible for the Earned Release Program, which is an intensive AODA program, [the trial court is] told. That is – [the trial court] think[s] it’s a six month program.

....

[The trial court] know[s] there are other drug programs. [The trial court] can’t order you into them but [it] will make you eligible for Earned Release. If you successfully complete Earned Release and otherwise don’t cause any problems, then the remaining confinement portion is converted to extended supervision.

[The trial court] will -- [the trial court is] going to ask that the judgment of conviction reflect that your problem is one of cocaine addiction and that the purpose for this sentence is to attempt to get you into drug programming.

¶9 Although they addressed the gravity of the offense during the consolidated plea and sentencing proceeding, neither the trial court nor the prosecutor characterized this as an aggravated or violent offense. It was a check forgery, victimizing Haas’s mother. The trial court recited the offense and its maximum penalty. The purpose of this sentence was not about the gravity of the offense; the mention of the forgery and its penalty was sufficient and proportional to the impact the gravity of the offense would have on the sentence imposed.

¶10 The trial court’s focus was on Haas’s underlying problem, his cocaine addiction. It viewed the forgery as a symptom of that problem, and determined that if Haas could resolve his cocaine addiction, it was unlikely that his unlawful conduct would continue. This unlawful conduct resulting from his cocaine addiction posed “a danger on into the future as far as the eye can see. There will always be other people from whom [Haas] will need to take money in order to support [his] habit until [he’s] got that under control.” These comments reflect the need to protect the public, another sentencing factor.

¶11 The trial court’s principal purpose, and the emphasis of its remarks, however, was to facilitate drug treatment to resolve Haas’s cocaine addiction, which was the root of his unlawful conduct; without treatment, Haas would continue to be a risk to the community. The trial court understood that drug treatment in prison was available to those inmates who served longer sentences. Haas confirmed that this, too, was his understanding. In fact, he commented that when he served his previous two-year sentence, that was too short a time period to enable him to participate in the prison treatment programs he believed he needed. Regardless of whether Haas agreed with the trial court’s purpose in imposing a lengthier sentence, that purpose – drug treatment – related to a primary sentencing factor, the defendant’s character, specifically his rehabilitative needs.

¶12 The trial court clearly stated the linkage between the confinement portion of Haas’s sentence and its sentencing objective. *See Gallion*, 270 Wis. 2d 535, ¶46. The trial court explained the reasons for the length of the sentence, Haas’s participation in prison drug treatment programs. The trial court imposed an individualized sentence, fashioned to meet its sentencing objective. It explained its reasons and its objective was reasonable. Notwithstanding Haas’s dissatisfaction with the trial court’s method of achieving its sentencing objective, 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).

