

**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. 2005AP1901-CR

Cir. Ct. No. 2004CF4643

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EULOS J. ROUNDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Eulos J. Rounds pled guilty to the following crimes: first-degree recklessly endangering safety; possession of a firearm by a felon; carrying a concealed weapon; and bail-jumping. On the first two charges, the circuit court imposed consecutive sentences totaling twelve years, with Rounds

to serve a minimum of six years in initial confinement. The circuit court imposed concurrent nine-month sentences on the misdemeanor charges and ordered those sentences to run concurrently with the twelve-year prison sentence. Postconviction, Rounds challenged the sentences, arguing that the circuit court imposed unduly harsh sentences and failed to give adequate consideration to his remorsefulness and his acceptance of responsibility. The circuit court denied the motion, and Rounds has commenced this appeal. Because the record demonstrates that the circuit court properly exercised its sentencing discretion and imposed reasonable sentences under the circumstances, we affirm the judgment of conviction and the postconviction order.

¶2 Rounds, his girlfriend Twanda Hudson, Hudson's five-year-old daughter Distiny, and a number of other people were at a party on the evening of August 27, 2004.

¶3 While at the party, one of the individuals in the Rounds group saw a white four-door Chevrolet drive by two or three times. Shortly after the group walked away from the party, a white four-door Chevrolet pulled up next to Hudson, and at least one of the two occupants attempted to speak with her. Hudson told police that "she paid them no attention."

¶4 As the Rounds group approached an intersection, they observed the white Chevrolet stopped at the intersection. The driver waved the group through the intersection, allowing them to walk in front of the vehicle. According to one member of the group, Rounds approached the driver's side of the Chevrolet and then circled behind the car until he came to the passenger's side. At that point, Rounds pulled a handgun and pointed it in the direction of the passenger. No one in the group had seen the occupants of the Chevrolet act in a threatening manner.

¶5 The occupants of the vehicle accelerated into the intersection. Hudson was able to jump out of the way, but was unable to pull her daughter from the path of the car. The car hit the five-year-old and then rolled over her. As the car sped away, Rounds fired six shots at the vehicle. Hudson's daughter died from her injuries.

¶6 Rounds was charged with: (1) recklessly endangering safety for firing the handgun at the retreating vehicle; (2) being a felon in possession of a firearm due to an earlier felony conviction; (3) carrying a concealed weapon, because the gun he had been carrying was concealed in his pants; (4) and bail-jumping because at the time of the incident, he had been charged with a misdemeanor and released on bond.

¶7 At the sentencing hearing, the State requested a substantial prison sentence for Rounds, which was consistent with the plea bargain. When Rounds addressed the court, he recognized that his actions were likely to result in a prison term. Rounds requested "two to three years confinement and Extended Supervision." The circuit court imposed the twelve-year prison sentence with six years of initial confinement based on the fact that Rounds caused the sequence of events that led to Distiny's death and that his actions in firing the handgun at the retreating car easily could have led to the death or injury of others. The court indicated that it considered Rounds's actions to be "aggravated version[s] of the offenses," due to Rounds's display and use of a handgun. The court noted that, although Rounds had no prior convictions involving violence or handguns, it did note that he had a substantial criminal record, mainly for drug crimes. The court also recognized that Rounds had clearly suffered as a result of the death of Hudson's daughter, with whom he had been very close, and that he had many positive aspects to his character, including his educational background and his

dedication to Hudson and her daughter. The court concluded, however, that the seriousness of Rounds's actions and past criminal record required a substantial period of incarceration.

¶8 In his postconviction motion, Rounds challenged the severity of the sentences the circuit court imposed, contending that the circuit court had failed to give adequate weight to the loss he had suffered as a result of Distiny's death. He argued that the child's death was significant punishment, which would "affect the defendant for the rest of his life and ... arguably have more of an impact on him than any confinement or supervision time." He also argued that the sentences imposed on him were twice as long as those defense counsel recommended and that they were therefore unduly harsh. The circuit court rejected these arguments, concluding that it had properly exercised its sentencing discretion and that the sentences imposed were not unduly harsh given the nature and consequences of Rounds's crimes. Rounds appeals.

¶9 The standard of review is well-settled.

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).

¶10 A sentence is unduly harsh and thus an erroneous exercise of discretion 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).

¶11 The record in this instance demonstrates that the circuit court considered all relevant sentencing factors, including Rounds’s prior criminal record, the seriousness of the crime, its consequences and its potential consequences, Rounds’s educational background, and the need to protect the public from actions like those taken by Rounds. The record demonstrates that the circuit court considered the required sentencing factors when it imposed sentence. In addition, nothing about the sentences suggests that they are so disproportionate to the offenses as to shock public sentiment and violate the judgment of reasonable people. Rounds’s actions set into motion a chain of events that resulted in the death of a five-year-old child and could have resulted in the death or serious injury of many others.

By the Court.—Judgment and order affirmed.

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

