

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 22, 2007**

David R. Schanker  
Clerk of Court of Appeals

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**Appeal No. 2006AP1618-CR**

**Cir. Ct. No. 2003CF1987**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRISTOPHER E. ELIM,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEAN W. DIMOTTO and MICHAEL B. BRENNAN, Judges.<sup>1</sup> *Affirmed.*

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

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<sup>1</sup> The Honorable Jean W. DiMotto presided over the adult court proceedings through acceptance of the guilty plea and sentencing. The Honorable Michael B. Brennan presided over the postconviction proceedings.

¶1 KESSLER, J. Christopher E. Elim appeals from an order denying his postconviction motion that *State v. Jerrell C.J.*, 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110, should be applied retroactively (thereby suppressing Elim’s not-electronically-recorded confession), that it would be a manifest injustice to refuse to allow withdrawal (because he should be treated similarly to the defendant in *Jerrell* and because there was no evidence corroborating his confession) and that the trial court erroneously exercised its discretion both in denying the reverse waiver petition and in failing to sentence Elim as a juvenile. Because our supreme court in *Jerrell* announced a new evidentiary rule requiring electronic recording of juvenile interrogations to be applied “in future cases,” and because we held in *State v. Kraemer*, 156 Wis. 2d 761, 457 N.W.2d 562 (Ct. App. 1990), that a guilty plea in an adult criminal proceeding is a waiver of any defects in prior juvenile proceedings that are not jurisdictional, and because the trial court properly considered, on the record, the factors set forth in WIS. STAT. § 938.18(5) (2005-06)<sup>2</sup> and in *McCleary v. State*, 49 Wis. 2d 263, 182 N.W.2d 512 (1971), in sentencing Elim, we conclude that: (1) Elim cannot invoke the recording requirement announced in *Jerrell* long after his interrogation occurred; (2) by his guilty plea, he has waived any challenges to prior nonjurisdictional proceedings; and (3) the trial court did not erroneously exercise its discretion as to sentencing; therefore, we affirm.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

## BACKGROUND

¶2 At age fourteen years, nine months, Elim was charged as an adult, pursuant to WIS. STAT. § 938.183(1)(am) (2003-04), with one count of first-degree reckless homicide, party to a crime, and two counts of first-degree reckless injury, party to a crime, all while armed, in violation of WIS. STAT. §§ 940.02(1), 940.23(1)(a), 939.05 and 939.63 (2003-04). These charges arose because Elim and his cousin fired numerous shots into a group of people on a porch in retaliation for a fight Elim and his cousin had with people at the house at that location some days earlier. One person died and two were injured, one seriously. One of the shooting victims, Keris<sup>3</sup> McHenry, positively identified Elim from a photo array on April 2, 2003. That same day at approximately 11:30 a.m., Elim was arrested at his home and advised of his *Miranda*<sup>4</sup> rights. Elim was booked and put into an interrogation room sometime between 12:20 p.m. and 1:00 p.m. Beginning at 1:05 p.m., Elim was interrogated by two police officers (a youthful-looking lieutenant and a detective), was advised of his *Miranda* rights one sentence at a time, and was offered food, drink and bathroom facilities (all of which he declined). Elim was not handcuffed during questioning and neither officer had a weapon in the interview room. During questioning conducted by only one of the two officers present, Elim confessed. The officers then wrote out Elim's confession, they read it to him and Elim made corrections to individual sentences. Elim signed the confession after writing on the last page of the confession that it was true and also signed each page of the confession.

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<sup>3</sup> The record variously notes the spelling of this individual's first name as Karis, Keris or Keiaris. It is clear from the record that the same individual is being referenced.

<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶3 A reverse waiver hearing<sup>5</sup> was held to determine whether Elim should be prosecuted in the juvenile court system. The juvenile court declined to return him to that system, and after two hearings, within which a separate competency hearing was conducted and Elim was determined to be competent to stand trial, Elim's case remained in adult court.

¶4 Elim then moved to suppress his confession as involuntary, alleging that because he was tested while in custody and found to have an IQ of 65, he did not have the intelligence or ability to voluntarily waive his rights, and further argued that his confession was involuntary because he was questioned without the presence of either counsel or an interested adult. A *Miranda-Goodchild*<sup>6</sup> hearing

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<sup>5</sup> WISCONSIN STAT. § 970.032 (2003-04), entitled "Preliminary examination; juvenile under original adult court jurisdiction," states, in pertinent part:

(2) If the court finds probable cause to believe that the juvenile has committed the violation of which he or she is accused under the circumstances specified in s. 938.183 (1) (a), (am), (ar), (b) or (c), the court shall determine whether to retain jurisdiction or to transfer jurisdiction to the court assigned to exercise jurisdiction under chs. 48 and 938. The court shall retain jurisdiction unless the juvenile proves by a preponderance of the evidence all of the following:

(a) That, if convicted, the juvenile could not receive adequate treatment in the criminal justice system.

(b) That transferring jurisdiction to the court assigned to exercise jurisdiction under chs. 48 and 938 would not depreciate the seriousness of the offense.

(c) That retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused under the circumstances specified in s. 938.183 (1) (a), (am), (ar), (b) or (c), whichever is applicable.

<sup>6</sup> *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

was held to determine whether Elim understood his *Miranda* rights at the time he was advised of them in the interview room. The trial court determined that Elim understood his rights. Thereafter, Elim entered a guilty plea to one count of second-degree reckless homicide, party to a crime, one count of first-degree reckless endangerment, party to a crime, and one count of the two counts originally charged of first-degree reckless injury, all these counts modified to include the while-armed penalty enhancer.

¶5 On May 13, 2005, Elim was sentenced as an adult to a combined total of thirty-three years' imprisonment, composed of fourteen years' initial confinement<sup>7</sup> and nineteen years of extended supervision,<sup>8</sup> with 773 days of sentence credit. On July 7, 2005, the Wisconsin Supreme Court announced its decision in *Jerrell* requiring that “[a]ll custodial interrogation of juveniles in future cases shall be electronically recorded where feasible, and without exception when questioning occurs at a place of detention.” *Id.*, 283 Wis. 2d 145, ¶58.

¶6 Elim's postconviction counsel timely filed a postconviction motion seeking to withdraw Elim's guilty pleas on the grounds that *Jerrell* should be applied retroactively (thereby suppressing Elim's not-electronically-recorded confession), that it would be a manifest injustice to refuse to allow withdrawal

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<sup>7</sup> The trial court, in rendering sentence, ordered the counts to be served as follows: count one, then count three and finally count two. By doing so, the court was able to make Elim eligible for the Challenge Incarceration Program (CIP) and the Earned Release Program (ERP). Statutorily, count two was the only crime which allowed Elim to be eligible for these programs. These eligibilities provided Elim an opportunity to shorten his time in confinement after he had served the first ten years of his confinement sentence.

<sup>8</sup> The extended supervision portion of Elim's sentence on count one was commuted to ten years after a determination was made that, under WIS. STAT. § 973.01(2)(d)3. (2003-04), ten years was the maximum term of extended supervision allowed for a Class D felony. This resulted in a sentence of imprisonment on all counts of thirty-and-one-half years.

(because he should be treated similarly to the defendant in *Jerrell* and because there was no evidence corroborating his confession) and that the trial court erroneously exercised its discretion both in denying the reverse waiver petition and in failing to sentence Elim as a juvenile. The trial court denied the motion. This appeal followed. Additional facts will be provided in the discussion section of this opinion as necessary.

### STANDARD OF REVIEW

¶7 We review questions of statutory interpretation *de novo*. *State v. Stenklyft*, 2005 WI 71, ¶¶7, 11, 281 Wis. 2d 484, 697 N.W.2d 769. “However, we benefit from the analysis of the previous court’s decision.” *Jackson County v. DNR*, 2006 WI 96, ¶10, 293 Wis. 2d 497, 717 N.W.2d 713 (citation omitted).

¶8 A trial court’s “decision to retain or transfer jurisdiction in a reverse waiver situation” is discretionary and, therefore, our review is for an erroneous exercise of that discretion. *State v. Dominic E.W.*, 218 Wis. 2d 52, 56, 579 N.W.2d 282 (Ct. App. 1998) (citation omitted).

A discretionary determination is the product of a rational mental process by which the facts of record and law relied upon are stated and considered together for the purpose of achieving a reasoned and reasonable decision. We will not reverse a trial court’s discretionary determination if the record reflects that discretion was truly exercised; in fact, we will look for reasons to sustain the decision.

*Id.* (citation omitted).

¶9 A trial court’s denial of a motion to withdraw a plea is also reviewed under the erroneous exercise of discretion standard. *State v. Black*, 2001 WI 31, ¶9, 242 Wis. 2d 126, 624 N.W.2d 363. A defendant must establish a manifest injustice supporting plea withdrawal and does so by showing that he or she did not

knowingly, intelligently and voluntarily enter the plea. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Because a plea that is not entered knowingly, intelligently and voluntarily violates due process, the determination of whether a plea is voluntarily made presents a question of constitutional fact. *Id.*, ¶19. We accept the trial court’s findings of historical and evidentiary facts unless they are clearly erroneous, but we determine *de novo* whether those facts demonstrate a knowing, intelligent and voluntary plea. *Id.*

¶10 When moving to withdraw a plea after sentencing, the defendant “carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a ‘manifest injustice.’” *State v. Thomas*, 2000 WI 13, ¶16, 232 Wis. 2d 714, 605 N.W.2d 836 (citations and one set of internal quotation marks omitted). “The higher standard of proof is used after sentencing, because once the guilty plea is finalized, the presumption of innocence no longer exists.” *Id.* (citations omitted). “Once the defendant waives his [or her] constitutional rights and enters a guilty plea, the state’s interest in finality of convictions requires a high standard of proof to disturb that plea.” *Id.* (citation and two sets of internal quotation marks omitted). To prevail under the “manifest injustice” test, a defendant must “show ‘a serious flaw in the fundamental integrity of the plea.’” *Id.* (citations omitted).

¶11 The standard of review when a criminal defendant challenges the sentence imposed is well-settled:

[T]he 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). The primary sentencing factors are the gravity of the offense, the character of the offender and the need for public protection. *McCleary*, 49 Wis. 2d at 276. 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 *State v. Larsen*, 141 Wis. 2d 412, 426-28, 415 N.W.2d 535 (Ct. App. 1987). 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).

¶12 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). See also *State v. Giebel*, 198 Wis. 2d 207, 220, 541 N.W.2d 815 (Ct. App. 1995) (We review an allegedly harsh and excessive sentence for an erroneous exercise of discretion.).

## DISCUSSION

¶13 Elim first argues that the rule announced by the Wisconsin Supreme Court in its decision in *Jerrell* should be applied retroactively to him. In so doing, Elim argues that this court should determine that because Elim’s interrogation by police was unrecorded, any confession he may have made during the interrogation should be inadmissible, and therefore, pursuant to WIS. STAT. § 971.31(10), he can challenge it postconviction. Elim further argues that, if *Jerrell* is applied to him retroactively and, therefore, his confession becomes inadmissible, his request to withdraw his guilty pleas should be granted under the harmless error analysis set



forth in *State v. Dyess*, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985) (“[I]n respect to harmless versus prejudicial error ... the test should be whether there is a reasonable possibility that the error contributed to the conviction. If it did, reversal and a new trial must result.”), and *State v. Armstrong*, 223 Wis. 2d 331, 368-70, 588 N.W.2d 606 (1999) (applying the *Dyess* harmless error test in a guilty plea case, where the guilty plea was entered after a motion to suppress was denied).

¶14 The supreme court in *Jerrell* specifically held that the rule they were creating was a rule of evidence and that it was being created pursuant to their supervisory powers. *Id.*, 283 Wis. 2d 145, ¶58. The court analyzed the issue of whether to mandate the recording of all juvenile interrogations. *Id.*, ¶44. It determined that the question involved the admissibility of evidence at trial, a matter that was within its supervisory authority. *Id.*, ¶48. In its analysis, the court looked to the courts of Alaska and Minnesota, and like Minnesota, adopted this rule of evidence pursuant to its supervisory authority. *Id.*, ¶49. It determined that this was merely a rule of evidence because it “would not make it illegal for police to interrogate juveniles without a recording. Instead, it would render the unrecorded interrogations and any resultant written confession inadmissible as evidence in court.” *Id.*, ¶47.

¶15 The *Jerrell* court noted that:

Article VII, Section 3 of the Wisconsin Constitution expressly confers upon [the supreme] court superintending and administrative authority over all state courts [and that t]his provision “is a grant of power. It is unlimited in extent. It is indefinite in character” ... [and it] establish[es] “a duty of the supreme court to exercise ... administrative authority to promote the efficient and effective operation of the state’s court system.”

*Jerrell*, 283 Wis. 2d 145, ¶¶40-41 (citations omitted). As noted in Chief Justice Abrahamson’s concurrence in *Jerrell*, it is “the court’s broad constitutional superintending power to control litigation.” *Id.*, ¶61. Justice Abrahamson viewed the court’s “exercise of [its] superintending powers in the [*Jerrell*] case as a means of controlling the course of litigation in the courts of this state by governing the admission of evidence ... [noting that the court’s exercise of] its superintending power here is a question of policy, not power.” *Id.*, ¶65. As such, the supreme court held that, under its superintending authority, it was creating a rule of evidence, not a rule attempting to regulate police conduct.

¶16 Elim argues that the rule in *Jerrell* should be applied retroactively because it is a new procedural rule and therefore is subject to analysis under *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) (a new rule for the conduct of criminal prosecutions should be applied retroactively to all cases pending or on appeal when a new rule constitutes a “clear break” from the past), and *State v. Thiel*, 2001 WI App 52, ¶7, 241 Wis. 2d 439, 625 N.W.2d 321. However, our supreme court has already determined that the rule is not a procedural rule, but rather it is a rule of evidence to be applied *in future cases*. *Jerrell*, 283 Wis. 2d 145, ¶¶3, 58, 59 (“Today, we also exercise our supervisory power to insure the fair administration of justice. All custodial interrogation of juveniles in future cases shall be electronically recorded where feasible, and without exception when questioning occurs at a place of detention.”). Based upon the clear language of the court in *Jerrell*, application of the rule set forth therein is not retroactive.

¶17 Elim next argues that it would be a manifest injustice to not allow him to withdraw his guilty pleas because if not for the confession, he would not have pleaded guilty because “[t]he only evidence in the record is his statement reiterated in the criminal complaint.” However, on April 2, 2003, the same day

that Elim was arrested, one of the victims, Keris McHenry, picked Elim out of a photo array as one of the individuals who shot at the victims. Under the confession corroboration rule set forth in *Holt v. State*, 17 Wis. 2d 468, 480, 117 N.W.2d 626 (1962):

All the elements of the crime do not have to be proved independently of an accused's confession; however, there must be some corroboration of the confession in order to support a conviction. Such corroboration is required in order to produce a confidence in the truth of the confession. The corroboration, however, can be far less than is necessary to establish the crime independently of the confession. If there is corroboration of any significant fact, that is sufficient under the Wisconsin test.

A photo array identification by one of the victims, followed by a same-day confession by the identified individual, satisfies the confession corroboration rule.

¶18 Elim next argues that the trial court erred in denying Elim's reverse waiver motion. Whether to waive a juvenile out of criminal court is a discretionary determination of a trial court which we review for an erroneous exercise of discretion. *Dominic E.W.*, 218 Wis. 2d at 56. The State argues that because Elim pled guilty after his motion for reverse waiver was denied, he waived any challenges he may have had to defects in the reverse waiver process.

¶19 This very issue was addressed by this court in *Kraemer*. In *Kraemer*, the juvenile had pled guilty to crimes charged in adult court after the juvenile court had waived jurisdiction. *Id.*, 156 Wis. 2d at 763. On appeal, the juvenile contended that the juvenile court's failure to consider all of the statutory criteria for waiver deprived the adult court of subject matter jurisdiction to conduct the criminal proceedings and to enter a conviction. *Id.* at 764. Rejecting this contention, the court stated:

Even if the juvenile court had failed to consider all the statutory waiver criteria, or failed to set forth specific findings as to each, that is not a jurisdictional defect: it is an [erroneous exercise] of discretion. Thus, the error claimed by [the defendant], if indeed it was error, is judicial, not jurisdictional.

*Id.* (citation omitted). The court went on to hold that the defendant waived the alleged error when he pled guilty in adult court. *Id.* at 765.

¶20 In this case, Elim chose to plead guilty after his motions for reverse waiver and for suppression of his confession were denied. As a consequence of his plea agreement, Elim pled guilty to the reduced charges of one count of second-degree (rather than first-degree) reckless homicide, party to a crime, while armed; and one count of first-degree recklessly endangering safety (rather than reckless injury), party to a crime, while armed; as well as to one of the original first-degree reckless injury, party to a crime, while armed counts. Elim benefited from the plea agreement he made with the State and pursuant to *Kraemer*, cannot now challenge the reverse waiver process. *See id.*, 156 Wis. 2d at 765.

¶21 Finally, Elim alleges that the trial court erroneously exercised its discretion in sentencing Elim as an adult, rather than adjudicating him delinquent and imposing a disposition pursuant to WIS. STAT. § 938.34. We disagree.

¶22 A juvenile must prove by clear and convincing evidence that it is in the best interest of the juvenile and the public that the juvenile be declared delinquent. WIS. STAT. § 938.183(1m)(c)2.

¶23 During the sentencing hearing, the trial court heard from both the State and the defense. It reviewed the presentence investigation report, and asked Elim if his counsel had gone over the report with him page by page, to which Elim answered “[y]es.” The trial court read out loud the statements of the victims and

the victims' families regarding how their lives had been affected by the death of their mother and by their own injuries. The trial court took testimony from: (1) the superintendent of the secure detention facility (SDF) regarding Elim's good record of behavior at the SDF since his arrest on April 2, 2003; and (2) one of the SDF teachers regarding Elim's rapid progress in reading and math skills during his detention at the SDF, including how the testing done to determine that Elim had an IQ of sixty-five may have been an artifact of poor test-taking skills rather than ability.<sup>9</sup> The trial court reviewed the reverse waiver hearing transcript, the prior testimony of expert witness Dr. Diane Lytton and the prior testimony of a Department of Corrections official, Gerald Konitzer, regarding custodial and programming options that would be considered for Elim.

¶24 The trial court correctly set forth the standard for determining whether a juvenile disposition was appropriate: Did the defendant prove by clear and convincing evidence that it would be both in Elim's and the public's best interest for him to be adjudicated delinquent and given a juvenile disposition? The trial court then considered the factors set forth in WIS. STAT. § 938.18(5)<sup>10</sup> in

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<sup>9</sup> Additionally, during the reverse waiver/competency/suppression portions of this case, there was testimony from experts that the IQ testing results, as well as the *Miranda* understanding tests administered after Elim was in custody, could have been influenced by malingering.

<sup>10</sup> WISCONSIN STAT. § 938.18(5) (2003-04), states in pertinent part:

(5) If prosecutive merit is found, the court shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality and prior record of the juvenile, including whether the juvenile is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, the juvenile's physical and

(continued)

making its determination, concluding that: (1) subsection (d) was not applicable; (2) under subsection (c), in considering Konitzer's testimony regarding possible placement of Elim in Ethan Allen School for Boys, the Racine Youth Correctional facility, or some other facility, Elim has not proven by "clear and convincing evidence that the adequacy and suitability of facilities, services and procedures available for the treatment of the juvenile as a delinquent disposition are better or more suitable or in the best interests of the public and [Elim]"; (3) under subsection (b), consideration of the type and seriousness of the offense, it would depreciate the seriousness and willfulness of the acts which Elim committed, regardless of their title as "reckless," to not sentence him as an adult; and (4) under subsection (a), Elim's prior record, his admitted use of marijuana and alcohol, and his refusal to attend school, all provide a "pattern of living prior to his detention [that] was exactly the kind of living that leads to a crime like this," and with the

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mental maturity, the juvenile's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or willful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under s. 938.538 or the adult intensive sanctions program under s. 301.048.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction.

testimony by his teacher that he is responding very well to the structured environment, even becoming a leader “which shows that he has some good personality and character traits,” it would not be in Elim’s or the public’s best interests for Elim to receive a juvenile disposition. The trial court concluded that, particularly under subsections (a) and (b), “the interests of the community ... the best interests of the public and the best interests of the juvenile have not been shown by clear and convincing evidence to be to reverse waive him back to juvenile court for a juvenile disposition.”

¶25 Having determined that adult sentencing was appropriate, the trial court next considered the most appropriate sentence for each count. The trial court considered the three primary sentencing factors: gravity of the offense, rehabilitation of the defendant and protection of the public. *See McCleary*, 49 Wis. 2d at 276. In so doing, the trial court specifically discussed Elim’s willful disregard of others’ safety when he shot repeatedly into a house where people were standing and later running. The trial court noted the statements of the victim Keris McHenry and his sister Kela McHenry regarding the loss of their mother and Kela’s need, at age twenty-one and with two children of her own, to become the guardian and caregiver to her two brothers. The trial court noted that punishment was warranted for the violent taking of Mrs. McHenry’s life and for the violent behavior which led to the serious injury to the other two victims.

¶26 The trial court noted Elim’s previous convictions, specifically their pattern of escalation, and that the life that Elim had been living at the time of the shooting was one that facilitated such an escalation. The trial court reviewed the progress Elim had made over the past two years in detention and how he seemed to be able to progress in a highly structured environment, and noted that this structure did not exist within his family life.

¶27 Finally, the court addressed the need for the public to be protected from the violent type of behavior which Elim had exhibited in the shooting and that the best way to do this was for Elim to continue to live and study in a “very highly structured setting” which would allow him to continue his education, so that when he returned to the community, he would have the skills necessary to thrive and not return to crime.

¶28 The trial court then sentenced Elim to consecutive sentences on each of the counts, ultimately resulting in Elim being sentenced to a total of fourteen years of initial confinement, with eligibility for CIP or ERP after completing ten years, and sixteen-and-a-half years of extended supervision. For each of the second-degree reckless homicide and the first-degree reckless injury counts, Elim could have received thirty years of imprisonment<sup>11</sup> and a \$100,000 fine. Elim’s sentence of thirty-and-one-half years for all three counts, with eligibility for CIP or ERP after serving ten years of initial confinement, is not “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.

¶29 Because the trial court addressed both those factors relating to the appropriateness of a juvenile disposition, and those factors relating to sentencing, setting forth clear reasons for its decision, and its sentence on the three counts was substantially less than the maximum possible for the three violent offenses, we conclude that the trial court did not erroneously exercise its discretion when it

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<sup>11</sup> Both second-degree reckless homicide and first-degree reckless injury are Class D felonies, with a maximum imprisonment of twenty-five years. An additional five years could have been added to each count pursuant to WIS. STAT. § 939.63.



refused to waive Elim into the juvenile court for disposition or when it sentenced Elim in this case.

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

Not recommended for publication in the official reports.

