

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 5, 2007

David R. Schanker
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. 2006AP2472-CR

Cir. Ct. No. 2002CF2492

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DARRELL W. COLEMAN, JR.,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Darrell W. Coleman, Jr. appeals from a reconfinement order and a related order denying postconviction relief. The issues are whether the trial court adequately explained its reasons for imposing the reincarceration period it did, and whether it explained how that period was the

minimum amount of custody necessary to achieve the reconfinement considerations (“minimum custody standard”). We conclude that the trial court’s consideration of the primary sentencing factors, along with Coleman’s violations resulting in revocation as bolstered by its postconviction order, demonstrates an adequate exercise of discretion to withstand appellate scrutiny. Therefore, we affirm.

¶2 Coleman was convicted of second-degree sexual assault of a child. The trial court imposed a forty-four-month sentence comprised of two twenty-two-month periods of initial confinement and extended supervision to run concurrently to a sentence he was then serving. His extended supervision was revoked after approximately two years when the Department of Corrections (“Department”) proved that he had violated seven of the nine conditions alleged. There was one year, ten months and one day available for reconfinement. The Administrative Law Judge revoked Coleman’s extended supervision and ordered a one-year reincarceration period.

¶3 At the reconfinement hearing, the State agreed with the Department’s recommendation of a reincarceration period of one year, three months; Coleman urged the trial court to follow the Administrative Law Judge’s order of one year. The trial court imposed a one-year, three-month reincarceration period.

¶4 Coleman appeals, contending that the trial court erroneously exercised its discretion by failing to explain why it imposed fifteen months of reincarceration and why that fifteen-month period met the minimum custody standards; he urges us to apply *State v. Brown*, 2006 WI 131, 298 Wis. 2d 37, 725 N.W.2d 262. We need not reach the issue of *Brown*’s applicability because we

conclude that the trial court's explanation, as fortified by its postconviction order, constituted an adequate exercise of discretion to explain why it imposed essentially three months more than the minimum recommendation, even if *Brown* applies.

¶5

We conclude that a reconfinement decision, like an initial sentencing decision, involves the [trial] court's discretion, and we review the [trial] court's decision to determine whether that discretion was erroneously exercised.... As long as the reconfinement court considered the relevant factors, and not irrelevant or improper ones, and the decision was within the statutory limits, the sentence will not be reversed, unless 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.

Id., ¶22 (citations omitted). The court that orders reincarceration may consider similar factors to those considered when sentence was originally imposed. *See id.*, ¶7. 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 court ordering reincarceration may also consider the various reincarceration recommendations, the violations alleged and resulting in revocation, the amount of reincarceration necessary to protect the public from the risk of further criminal activity, "and the rehabilitative goals to be accomplished by reconfinement for the time period in question." *See Brown*, 298 Wis. 2d 37, ¶7. The weight the trial court assigns to each factor is a discretionary determination. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). "The court should impose the minimum amount of confinement which is consistent with the protection of the public, the gravity of the offense, and the defendant's rehabilitative needs." *Brown*, 298 Wis. 2d 37, ¶45 (citation omitted).

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 the reconfinement hearing, the trial court began by reciting the primary sentencing factors. It considered the Administrative Law Judge’s findings of multiple violations of the conditions of extended supervision. It told Coleman that “[o]bviously it’s important for you to follow the rules and apparently you haven’t.” It further acknowledged that two of the nine allegations had not been proven, but that Coleman’s failure to follow the rules was problematic. It also was mindful that it was imposing the reincarceration period concurrently to another confinement period. It ultimately decided to follow the Department’s recommendation, which presented a three-month differential to Coleman’s request.

¶7 Coleman criticized the trial court in his postconviction motion for failing to adequately explain its reconfinement order. In its postconviction order, the trial court denied the motion and added more detail to its reincarceration determination. It characterized Coleman’s adjustment to supervision as poor, and listed many of his violations. It then explained that it had considered “the gravity of the violations, the defendant’s character as revealed by his poor conduct under supervision and the risk he posed to the community.” It again acknowledged that the Department had failed to prove all of the alleged violations against him, but had proven “enough ... violations, many of which were quite serious given the nature of the defendant’s underlying conviction, which sent a message to the court that the defendant posed a substantial risk to the community.” It concluded that it had

touched on all the appropriate sentencing factors when it sentenced the defendant in 2002. The court was not obliged to go back to square one in 2006 to determine the appropriate amount of reconfinement in this case. Here, the court agreed that the Department's recommendation was appropriate given the number and nature of the defendant's violations and the obvious risk that his behavior presented to the community.

¶8 We conclude that the trial court's explanation for imposing the reincarceration period recommended by the Department and the State that was three months longer than the recommendation of the Administrative Law Judge and Coleman was an adequate exercise of discretion. *See State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 ("no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion"). Similarly, we conclude that the trial court's explanation was adequate to meet the minimum custody standards. The differential in reincarceration recommendations was three months. Coleman quit his job without informing his agent; he also caused a disturbance at work. He possessed pornography, was driving without a valid driver's license, had contact with a minor, and possessed a computer and video camera without his agent's approval. He had previously pled guilty to having sexual relations with a fourteen-year-old girl. The trial court's conclusion that he posed a risk to the community was not unfounded.

¶9 We conclude that the trial court adequately exercised its discretion in ordering a reincarceration period that was consistent with two of the four recommendations, and which was only three months longer than what Coleman himself recommended. Regardless of *Brown's* applicability, the trial court's reincarceration determination withstands appellate review.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5. (2005-06).

