

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 26, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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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.

**No. 00-2855-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GEORGE D. THOMAS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Juneau County: DUANE POLIVKA, Judge. *Affirmed.*

Before Dykman, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. George Thomas appeals a judgment convicting him of one count of delivering cocaine and two counts of delivering heroin. He also appeals an order denying postconviction relief. The trial court entered judgment after a jury trial and sentenced Thomas to a total of twenty-five years in

prison. He contends that the trial court erroneously excluded other acts evidence concerning the principal witnesses against him, and that it improperly exercised its sentencing discretion.

¶2 At trial, the State presented evidence that in January and February 1999, an undercover police officer twice bought heroin and once bought cocaine from Thomas at Thomas's apartment. The officer paid \$740 for the drugs, from marked money provided by a deputy sheriff, who managed funds for the Juneau County Metropolitan Enforcement Group (MEG Unit). Officers searched Thomas's apartment two weeks later, but found none of the cash paid to Thomas, nor any other evidence of drug dealing.

¶3 The deputy who transferred the cash had managed the MEG Unit funds for several years. In 1994, an audit revealed that \$1,000 in the MEG Unit funds was missing and not accounted for. The Wisconsin Department of Justice investigated the disappearance but found no evidence of wrongdoing by the deputy or anyone else.

¶4 The defense had a theory that the undercover officer and the deputy, and possibly other MEG Unit officers, fabricated the drug buys to conceal the embezzlement of the \$740. To support that theory, Thomas sought to question the deputy concerning the 1994 disappearance of funds. The court excluded cross-examination on that issue as irrelevant and unfairly prejudicial to the State.

¶5 At sentencing, the trial court primarily considered the damage to society from drug dealing, the fact that Thomas had never held a full-time permanent job, that he had a substantial felony record, that he had refused to cooperate with the presentence investigation and was not remorseful, and that he had a history of extensive drug abuse. Based on these factors, the court concluded

that substantial prison sentences were necessary to protect the public. The court imposed three consecutive sentences totaling twenty-five years in prison, with 323 days of sentence credit.<sup>1</sup>

¶6 A trial court's decision to exclude evidence is a discretionary determination, which we will not overturn on appeal if it has a reasonable basis and the court relied on accepted legal standards and relevant facts of record. *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498 (1983). Evidence is not admissible unless it is relevant. WIS. STAT. § 904.02 (1999-2000).<sup>2</sup> Relevant evidence is that having a tendency to make the existence of a material fact more or less probable than it would be without the evidence. WIS. STAT. § 904.01. Even relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." WIS. STAT. § 904.03.

¶7 The trial court did not err by barring cross-examination of the deputy concerning the missing MEG Unit funds. Thomas contends that the court's decision violated his constitutional right to present evidence and confront witnesses. However, courts may impose reasonable limits on cross-examination without violating the confrontation clause. *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). There is no constitutional right to present prejudicial evidence with little or no probative value. *See Taylor v. Illinois*, 484 U.S. 400, 410 (1988). Here, the alleged misappropriation of funds was not only remote in time, but

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<sup>1</sup> The court also sentenced Thomas on a misdemeanor drug offense to a six-month concurrent jail sentence. The misdemeanor conviction is not a part of this appeal.

<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Thomas offered no proof linking the deputy or any other witness to the alleged misappropriation, other than by association with the MEG Unit. Its relevance to Thomas's guilt or innocence was therefore minimal or nonexistent. Questions and testimony regarding the issue would have served only to invite prejudicial speculation about the officers involved.

¶8 A sentencing decision is discretionary, and a defendant challenging a sentence must overcome the presumption that the trial court acted reasonably. *State v. Lechner*, 217 Wis. 2d 392, 418 ¶46, 576 N.W.2d 912 (1998). The primary factors in sentencing are the gravity of the offense, the character of the offender, and the need for the public's protection. *Elias v. State*, 93 Wis. 2d 278, 284, 286 N.W.2d 559 (1980). If the trial court reasonably relies on the appropriate factors, we will affirm unless the sentence is so excessive and unusual, or so disproportionate to the offense, that it shocks public sentiment and violates the judgment of reasonable people. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶9 The trial court did not erroneously exercise its sentencing discretion. The sentences totaling twenty-five years in prison were not excessive under any reasonable view. Thomas had a criminal history dating back almost thirty years, with several serious felonies on his record. He had served three prison terms, totaling some ten years, without notable deterrent effect on his criminal behavior. He had never successfully supported himself through work. There was evidence that he was a chronic abuser of drugs and alcohol. The trial court also reasonably considered the seriousness of the offenses and Thomas's lack of remorse for them. Given these circumstances, sentences totaling twenty-five years in prison, out of a maximum of forty, do not shock public sentiment nor violate reasonable judgment.

¶10 Thomas also contends that the trial court relied on improper factors by commenting that Thomas was a frequent drug dealer, and by sentencing him more severely for protesting his innocence. The trial court actually said: “[t]he amounts involved are very significant when one factors in the unknown number of people whom a person like this defendant could deliver drugs to on a day to day basis. That’s only conjecture as to what actually takes place and I’m sure it’s substantial.” Thomas correctly notes that there was no physical evidence that he dealt drugs other than on the occasions he sold heroin and cocaine to the undercover officer. However, the court could reasonably infer frequent drug dealing from those sales, from Thomas’s long-term abuse of drugs, his criminal history, and the absence of any legitimate source of income for him. Additionally, the court did not further comment on drug dealing and the record demonstrates that its “conjecture” on the extent of Thomas’s activities played no substantial part in the sentencing decision.

¶11 As for Thomas’s insistence on his innocence, we reject his assertion that the trial court punished him for his comments. The trial court did, however, plainly consider it as one of several factors demonstrating his lack of remorse. The defendant’s attitude toward the crime is a relevant sentencing factor, and refusal to admit guilt is evidence of a lack of remorse. *See State v. Fuerst*, 181 Wis. 2d 903, 916, 512 N.W.2d 243 (Ct. App. 1994).

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

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

