

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 12, 2008

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. 2007AP577-CR

Cir. Ct. No. 2005CF5912

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICKEY JAMES GRANDY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS and JEFFREY A. KREMERS, Judges.¹

Affirmed.

¹ The Honorable Elsa C. Lamelas presided at the trial and entered the judgment of conviction. The Honorable Jeffrey A. Kremers heard the postconviction motion and entered the order denying postconviction relief.

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

¶1 PER CURIAM. Rickey James Grandy appeals from the judgment of conviction entered against him and the order denying his motion for postconviction relief. He argues on appeal his sentence should be modified because of certain mitigating factors, his sentence is too harsh when compared to that of his co-actor, the trial court disregarded the presentence investigation report, the trial court did not explain why it imposed consecutive sentences, and the trial court erred when it denied his motion for postconviction relief. Because we conclude that the trial court properly exercised its discretion when it sentenced him and when it denied his motion for postconviction relief, we affirm the judgment and order.

¶2 Grandy pled guilty to three counts of armed robbery, as a party to a crime. At the sentencing hearing, defense counsel asked the court to sentence Grandy to six years of initial confinement and seven years of extended supervision on all three counts to be served concurrently. The presentence investigation report recommended that the court sentence him to four to five years of initial confinement and two years of extended supervision on each count to be served consecutively. The court sentenced him to five years of initial confinement and six years of extended supervision on each count to be served consecutively. Grandy then filed a motion for postconviction relief asking the court to modify his sentence. Because the judge who sentenced him was no longer assigned to the felony division, a different judge heard the postconviction motion. The court denied the motion.

¶3 Grandy now argues to this court that the trial court erroneously exercised its discretion when it sentenced him. Sentencing lies within the sound

discretion of the trial court, and a strong policy exists against appellate interference with the discretion. *State v. Mosley*, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). The trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *Id.* “The primary considerations in imposing a sentence are the gravity and nature of the offense (including the effect on the victim), the character of the defendant and public safety.” *State v. Carter*, 208 Wis. 2d 142, 156, 560 N.W.2d 256 (1997). The discretion of the sentencing judge must be exercised on a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The weight to be given the various factors is within the trial court’s discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). “A defendant alleging that a sentencing decision was based on inaccurate information must show that: (1) the information was inaccurate, and, (2) the trial court actually relied on that inaccurate information in sentencing.” *State v. Harris*, 174 Wis. 2d 367, 378, 497 N.W.2d 742 (Ct. App. 1993) (citations omitted).

¶4 Grandy’s first argument is that he is entitled to sentence modification because of “mitigating factors.” First, he argues that the court erred because it relied on inaccurate information. He states that the court relied on parts of a doctor’s report addressing his psychiatric and addiction issues, but not the entire record. He further argues that the court ignored the conclusion of the doctor’s report that said he had legitimate psychiatric issues.

¶5 The record demonstrates, however, that the sentencing court considered at length Grandy’s psychiatric history. The court noted the statement in the doctor’s report that the accuracy of Grandy’s statements about his symptoms “must be considered within the context of [his] current legal situation and his

propensity for misrepresenting the truth regarding various other matters during this evaluation,” and his “manipulative use” of his symptoms. The court concluded that Grandy “is willing to say whatever he thinks is going to advance his prospects.” Grandy does not argue that the information on which the court relied was inaccurate. Rather, he appears to be challenging the conclusion the court drew from the information. We conclude that the court did not rely on inaccurate information and did not erroneously exercise its discretion in reaching these conclusions.

¶6 Grandy argues that the court erred because it did not properly consider his drug addiction, and by not making addiction treatment part of his sentence. The record shows, however, that the court was aware of his drug addiction. Further, a court may not order the Department of Corrections to provide specific treatment. *See State v. Lynch*, 105 Wis. 2d 164, 168, 312 N.W.2d 871 (Ct. App. 1981).

¶7 Grandy also argues that the court erred when it completed a sentencing matrix by not incorporating any “social factors” under the risk analysis. We conclude that if this was an error, it was harmless. The court does not have an obligation to complete a sentencing guideline worksheet and has the discretion to impose a sentence other than the one suggested by the guidelines. *See State v. Grady*, 2007 WI 81, ¶¶38-40, 302 Wis. 2d 80, 734 N.W.2d 364.

¶8 Grandy also argues that the trial court did not properly state its sentencing rationale as required by *Gallion*, and did not consider the appropriate

sentencing factors.² We disagree. In *Gallion*, the supreme court stated that judges must explain the reasons for the particular sentence they impose. *Gallion*, 270 Wis. 2d 535, ¶39. “How much explanation is necessary, of course, will vary from case to case.” *Id.* The court went on: “In short, we require that the court, by reference to the relevant facts and factors, explain how the sentence’s component parts promote the sentencing objectives.” *Id.*, ¶46. The court went on to state that it did not require mathematical precision. *Id.*, ¶49. “We do expect, however, an explanation for the general range of the sentence imposed. This explanation is not intended to be a semantic trap for circuit courts. It is also not intended to be a call for more ‘magic words.’” *Id.* The court concluded: “The rule of law suffers when the sentencing judge’s discretion is unguided and unchecked. The rationale for sentencing decisions must be made knowable and subject to review.” *Id.*, ¶51. In this case, the record shows that the trial court considered all of the required factors and thoroughly explained its reasons for imposing the sentence it did.

¶9 Grandy also argues that his sentence should be reduced because his co-actor received a shorter sentence. The imposition of different sentences on persons convicted of the same offense does not, in and of itself, constitute an erroneous exercise of discretion. *State v. McClanahan*, 54 Wis. 2d 751, 757, 196 N.W.2d 700 (1972). “A mere disparity between the sentences of co-defendants is not improper if the individual sentences are based upon individual culpability and the need for rehabilitation.” *State v. Toliver*, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994). As the circuit court noted when it denied his motion for

² We also note that Grandy’s argument on this point is at times self-contradictory. For example, he argues that the court did not explain why a shorter term of imprisonment was not an option, “but only stated that a shorter term was not an option given the seriousness of the offense and protection of the public.”

postconviction relief, Grandy and his co-actor were not similarly situated. Grandy was convicted of an additional armed robbery offense for stealing a car. This factor alone is enough to support the disparate sentences.

¶10 Grandy argues that the trial court erred because it did not explain why it imposed a sentence different from the one recommended in the presentence investigation report. The sentencing court should consider the recommendation in a presentence report, but is not bound by those recommendations. *State v. Hall*, 2002 WI App 108, ¶16, 255 Wis. 2d 662, 648 N.W.2d 41. In *Hall*, this court concluded that the sentencing court had not adequately explained its reasons for imposing a sentence of 304 years for crimes that did not carry life sentences. *Id.*, ¶1. In reaching this conclusion, we noted that the sentencing court had mentioned briefly many of the sentencing factors, but had not applied those factors to Hall's case. *Id.*, ¶17. We noted as one example that the sentencing court mentioned that it had relied on the presentence investigation report, but did not address the report's conclusions or explain why it added nearly 200 years to the report's recommended sentence. *Id.*, ¶16.

¶11 In this case, however, the trial court addressed the report's recommendation and imposed a sentence that was consistent with the report's recommendation for the initial term of confinement. The court deviated from the report's recommendation for the length of extended supervision, but explained why it imposed a longer term for that portion of the sentence. Contrary to Grandy's argument, the court properly considered the presentence report.

¶12 Grandy also argues that the trial court did not explain the reason it imposed consecutive sentences. Once again, however, the record belies this assertion. The trial court stated that it was imposing consecutive sentences to

reach the total minimum recommended sentence of fifteen years in prison for his initial confinement. The court also explained that it was imposing a lengthy term of extended supervision because the court was “very concerned” about Grandy because “I just don’t know how he is going to react once he is returned to the community.” The court went on to explain that “there should be absolutely no tolerance of the use of controlled substances by the defendant or any failure in his treatment if there are mental health needs and psychotropic medications that are deemed to be necessary.” The court concluded that it was imposing “a very long period of extended supervision because of the concerns that I have articulated regarding the manner in which the defendant has lived his life to date and the risk that I am concerned about with respect to his future.” Grandy’s argument that the court did not explain its reasons is meritless.

¶13 Finally, Grandy argues that the circuit court erred when it denied his motion for postconviction relief. This argument is also without merit. The circuit court correctly concluded that the trial court properly exercised its discretion when it sentenced Grandy. For the reasons stated, we affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

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

