

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 17, 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. 2007AP2215-CR

Cir. Ct. No. 2006CF6297

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHAROD ANTWON DOLL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: TIMOTHY M. WITKOWIAK, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Sharod Antwon Doll appeals from a judgment entered after he pled guilty to one count of delivery of a controlled substance,

cocaine (one gram or less), contrary to WIS. STAT. §§ 961.16(2)(b)1. and 961.41(1)(cm)1g. (2005-06).¹ He also appeals from an order denying his postconviction motion seeking sentence modification and an order denying his motion seeking reconsideration of the denial of his sentence modification motion. Because the trial court did not erroneously exercise its sentencing discretion, we affirm.

BACKGROUND

¶2 On November 22, 2006, City of Milwaukee Police Officer Phillip Lewis approached a parked vehicle in which Doll was the driver. Officer Lewis, posing as a drug buyer, told Doll he was looking for a “twenty,” meaning a twenty dollar quantity of cocaine base. Doll replied, “yeah, I got you.” Officer Lewis then handed Doll one pre-recorded \$20 dollar bill and Doll handed Officer Lewis two clear plastic baggies that contained an off-white chunky substance, which was later confirmed to be cocaine base.

¶3 After the transaction was completed, Doll drove away and Officer Lewis signaled to the other officers to stop and arrest Doll. When the officers did so, they found the marked \$20 dollar bill and 2.54 grams of marijuana on Doll’s person. He was arrested and charged. At the time of this incident, Doll was on extended supervision for a previous drug conviction, which was revoked and he was reconfined.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 After being charged in this case, Doll agreed to plead guilty and the State agreed to leave the sentence up to the trial court. The trial court accepted the plea and sentenced Doll to four years, consisting of one year of initial confinement and three years of extended supervision, consecutive to the sentence he was currently serving. Judgment of conviction was entered. In August 2007, Doll filed a postconviction motion, seeking sentence modification on the grounds that the sentence imposed was excessive. The trial court denied the motion. Doll filed a motion seeking reconsideration of that decision, which was also denied. He now appeals.

DISCUSSION

¶5 Doll's only issue in this case is that the trial court erroneously exercised its sentencing discretion by making the sentence in this case consecutive to the sentence he was already serving. We are not convinced.

¶6 When a defendant argues that his or her sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion "only where the sentence 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).

¶7 The sentencing court must consider three primary factors: (1) the gravity of the offense; (2) the character of the offender; and (3) the need to protect the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior pattern; the defendant's personality, character and social traits; the presentence investigation results; the viciousness or

aggravated nature of the defendant's crime; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the needs and rights of the public; and, the length of the defendant's pretrial detention. *Id.* at 623-24.

¶8 The weight to be given to each of these factors is within the trial court's discretion. *State v. Curbello-Rodriguez*, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984). After consideration of all the relevant factors, the sentence may be based on any one of the primary factors. *State v. Krueger*, 119 Wis. 2d 327, 338, 351 N.W.2d 738 (Ct. App. 1984). Because the trial court is in the best position to determine the relevant factors in each case, we shall allow the trial court to articulate a basis for the sentence on the record and then require the defendant to attack that basis by showing it to be unreasonable or unjustifiable. *State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

¶9 Citing *Bastian v. State*, 54 Wis. 2d 240, 248 n.1, 194 N.W.2d 687 (1972), Doll contends that he should have received probation or a stayed sentence unless the trial court found confinement was necessary to protect the public, to rehabilitate Doll, and because probation would not unduly depreciate the seriousness of the offense. *See id.* We are not convinced.

¶10 In reviewing the transcript from the sentencing, the trial court considered each of the primary sentencing factors. It noted the seriousness of the crime involved and that cocaine is a concern because it is very addictive. It was troubled by the fact that Doll was on supervision for a similar crime when he

chose to commit the current crime. Doll had been revoked twice for the same type of offense and had a previous conviction for possession of marijuana. The trial court was also concerned with protecting the public from Doll continuing to deliver cocaine on the streets of this neighborhood. The trial court did also note the mitigating factors, including Doll's cooperation, his family situation, and the relatively small amount of substance involved. In doing so, the trial court advised that it would typically impose more time on the initial confinement, but felt that one year would be sufficient and the lengthier supervision time would serve as a deterrent to Doll to re-violate.

¶11 From our review, we cannot conclude that the trial court erroneously exercised its discretion or that the sentence imposed was excessive. Doll's maximum potential punishment for this crime was a ten-year sentence, consisting of five years of initial confinement, followed by five years of extended supervision. Doll received one year of initial confinement, followed by three years of extended supervision. His sentence was well within the limits, and, on the lower end of the spectrum. Thus, we cannot conclude that the sentence imposed was unduly harsh.

¶12 Doll complains that the sentence was imposed consecutive to the reconfinement time he was currently serving due to revocation. He argues the trial court failed to adequately explain why it imposed the sentence consecutively. We reject his contention. The record clearly reflects the trial court's explanation for the consecutive sentence—the sentence was consecutive because Doll had been revoked twice before and had two prior convictions, and was under supervision for the similar type of offense, which he committed here. The trial court emphasized that Doll needed to be punished for two separate acts—one was for violating the terms of his supervision and the second was for violating the law by committing

this act. It was for these reasons that the trial court found a consecutive sentence was necessary to protect the public and not depreciate the seriousness of Doll's conduct. The trial court's decision to impose a consecutive sentence is sufficiently documented in the record and clearly not an erroneous exercise of discretion. Accordingly, the judgment and orders are affirmed.

By the Court.—Judgment and orders affirmed.

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

