COURT OF APPEALS
DECISION
DATED AND FILED

November 25, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2473-CR **Cir. Ct. No. 2006CF2733**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAVEN RENEE CURRINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM W. BRASH, III, Judge. *Affirmed*.

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

¶1 PER CURIAM. Raven Renee Currins appeals from a corrected judgment of conviction for second-degree reckless homicide while armed, and from a postconviction order denying her motion for sentence modification. The issue is whether the trial court was improperly influenced by an altercation in the

courtroom gallery at sentencing between the victim's family and Currins's family, causing it to erroneously exercise its discretion and impose an unduly harsh and excessive sentence. We conclude that the trial court did not impose an unduly harsh and excessive sentence, or erroneously exercise its sentencing discretion simply because it considered the sentencing factors differently than Currins had hoped it would, and that there was no evidence that an altercation that began in the courtroom gallery at sentencing and was removed to the hallway influenced the trial court's sentence. Therefore, we affirm.

¶2 The following facts are from the criminal complaint, which Currins admitted was "substantially true and correct." Currins and her boyfriend were involved in an argument. Rather than leaving Currins's apartment as she repeatedly asked him to, Currins's boyfriend instead took his revolver, cocked the hammer, pointed it at her with the revolver's barrel touching Currins's right temple, and threatened to shoot her. He then grabbed her left arm, and "jammed the gun into her right hand." He "forced her hand" so that the revolver was pointed at his left temple area, while he yelled, "Do it, bitch. Kill me. Push it." Currins's boyfriend continued to dare her to shoot him, so she ultimately did. He died later that day.

¶3 The State initially charged Currins with first-degree reckless homicide while armed. Incident to a plea bargain, Currins pled guilty to the reduced charge of second-degree reckless homicide while armed, in violation of WIS. STAT. §§ 940.06(1) (2005-06) and 939.63 (2005-06), in exchange for the State's sentencing recommendation of twenty-five years, consisting of a fifteen-

year period of initial confinement.[1] The trial court imposed a twenty-three-year sentence to run consecutive to any other sentence, comprised of thirteen- and ten-year respective periods of initial confinement and extended supervision. Currins moved for sentence modification, contending that the sentence was unduly harsh and excessive. The trial court summarily denied the motion. On appeal, Currins renewed her sentencing challenge, and also contended that the trial court's unduly harsh and excessive sentence resulted from the trial court's improper consideration of an altercation that occurred in the gallery during the sentencing hearing between the families of the victim and that of Currins.

> ¶4 When a criminal defendant challenges the sentence imposed by the [trial] court, the 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 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. *See* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

¶5 Currins acknowledges that the trial court considered the primary sentencing factors; her criticism is that the trial court did not assess the mitigating

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

circumstances as she thought it should, resulting in what she claims is an unduly harsh and excessive sentence. Currins also contends that the altercation in the courtroom gallery that occurred during sentencing should not have been considered when imposing sentence.

¶6 The weight the trial court accords each factor is a discretionary determination. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Currins acknowledges that the trial court considered the primary and many secondary sentencing factors; she criticizes how the trial court assessed those factors, namely that it imposed too much weight on the gravity of the offense (a homicide) at the expense of numerous compelling mitigating factors (including her lack of a criminal record, her character references, her acceptance of responsibility, and her extremely difficult childhood). The trial court properly exercised its sentencing discretion. That the trial court could have imposed sentence differently does not constitute an erroneous exercise of discretion. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) (our inquiry is whether discretion was exercised, not whether it could have been exercised differently).

¶7 Currins also contends, for the same reasons, that her sentence was unduly harsh. A sentence is unduly harsh 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***, 70 Wis. 2d at 185. "A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v.***

Daniels, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983); *see also* ***State v. Owen***, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996).

¶8 At sentencing, the trial court recalled that Currins pled guilty to a reduced charge. Although the trial court was aware that the State had some concerns with proving the initial charge of first-degree reckless homicide while armed, it was mindful that what Currins did involved the "loss of life." Had Currins been convicted of the offense with which she was initially charged, first-degree reckless homicide while armed, a Class B felony, she would have been subject to a maximum penalty of sixty-five years, as opposed to the maximum penalty of thirty years for the second-degree reckless homicide while armed, a Class D felony.[2] *See* WIS. STAT. §§ 940.02(1); 940.06(1); 939.50(3)(b) & (d); 939.63(1)(b).

¶9 The twenty-three-year sentence, including a thirteen-year period of initial confinement, was less than the maximum penalty for this offense, and less than the State's unilateral nonbinding sentencing recommendation to which Currins acquiesced incident to the plea-bargain she accepted. As such, the sentence is not unduly harsh. *See* ***Daniels***, 117 Wis. 2d at 22. A twenty-three-year sentence for shooting and killing a taunting boyfriend at close range "is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Id.***

[2] These maximum penalties include the five-year weapons enhancer. *See* WIS. STAT. § 939.63(1).

¶10 Currins also contends that the trial court "may have" improperly considered the altercation between the victim's family and Currins's family in the courtroom gallery during the sentencing hearing, and imposed a harsher sentence. Currins never raised that specific criticism in her postconviction motion for sentence modification, depriving the trial court of the opportunity to address whether it considered that altercation, and if so, how it assessed that consideration. *See* ***Fuerst***, 181 Wis. 2d at 915. We review the record to determine whether there is support for this challenge.

¶11 The trial court interrupted Currins's allocution, and the following colloquy occurred:

> THE COURT: Hold on for a second.
>
> I don't know who the other gentleman [was] that was taken out. Anybody know who that was?
>
> [DEFENSE COUNSEL]: I don't know who the other gentleman is. Do you want me to find out?
>
> THE COURT: Yes.
>
> BAILIFF: I am not going to open the door.
>
> [DEFENSE COUNSEL]: Well, my investigator is out there. He can tell me.
>
> BAILIFF: We can find out in a couple of minutes.
>
> THE COURT: Is that a family member?
>
> [DEFENSE COUNSEL]: I don't know.
>
> THE COURT: It's unacceptable.
>
> Go ahead, Miss Currins.

According to Currins, the trial court was referring to an altercation in the gallery between her family and the victim's family. The trial court, however, did not know who was involved. Those involved were removed from the courtroom.

¶12 Other than commenting that an altercation was "unacceptable" in the courtroom, there were no other references to the altercation. Currins does not demonstrate any consideration of or reference to the altercation by the trial court, much less any connection between it and the sentence. Currins did not raise that specific challenge in her postconviction motion; consequently, we have no indication from the trial court whether that unmentioned altercation affected its sentence. We will not remand this matter for sentence modification based on a conclusory accusation that has no support in the record.

By the Court.—Judgment and order affirmed.

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