COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP597-CR **Cir. Ct. No. 2006CF310**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUAN LEON NAVA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: J.D. McKAY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Juan Nava appeals a judgment sentencing him to life in prison with no eligibility for extended supervision plus thirty-two and one-half years' initial confinement and twenty years' extended supervision for first-degree intentional homicide, arson and three counts of first-degree reckless

endangerment. He also appeals an order denying his motion to reduce the sentences. He argues: (1) the trial court failed to identify the sentencing objectives and how the sentences imposed further those objectives; (2) the court failed to give reasons for imposing consecutive sentences; and (3) the court's remarks at sentencing evince a preconceived sentencing policy. We reject these arguments and affirm the judgment and order.

¶2 The evidence at trial established that Nava stabbed his girlfriend twenty-nine times and then set the house on fire, endangering her three young children. Nava told the author of the presentence investigation report that he stabbed his girlfriend in self-defense, and he denied setting the fires. Nava's counsel read a statement from Nava stating he was "sorry that this has happened" and that he did not understand how or why it happened. Counsel noted Nava's lack of a criminal record and asked the court to consider making Nava eligible for extended supervision after twenty-five years, noting Nava would be in his mid-fifties or sixties when he was released and he could "finish his years in Mexico." Noting the brutality and callousness of the crimes and the harm to the children's psyche, the court rejected counsel's proposal stating:

> I don't believe, and as a result of this sentence I don't think it will ever happen, I don't believe that it would ever be appropriate for this defendant, or any defendant who committed a crime such as these, to at some point in time walk out of the Wisconsin prison system and be deported to Mexico and live in Mexico as if nothing happened. That's an option which I would not and have not given any consideration to.

The court imposed a sentence of life in prison without eligibility for extended supervision for the murder, a consecutive term of twenty-five years' initial confinement and fifteen years' extended supervision for the arson, and three terms of seven and one-half years' initial confinement and five years' extended

supervision, concurrent with each other but consecutive to the homicide and arson sentences, for the three counts of reckless endangerment.

¶3 Although the court did not explicitly identify its sentencing objectives, its comments demonstrate its intent to punish Nava severely for these deplorable crimes and to protect the public from Nava's inability to control his anger. The sentences imposed achieve those goals. The court appropriately considered the seriousness of the offenses, Nava's character, including his implausible claim of self-defense and denial that he started the fires, along with his tepid apology, and his willingness to endanger small children in order to cover up his brutal crime. Given the nature of the offenses, a more lengthy elucidation of the court's sentencing rationale is not required.

¶4 Citing ***State v. Hall***, 2002 WI App 108, ¶14, 255 Wis. 2d 662, 648 N.W.2d 41, Nava argues that concurrent sentences are the presumptive norm and the sentencing court must expressly explain why it elects to impose consecutive sentences. That language is based on the ABA Standards for Criminal Justice Sentencing, § 18-6.5(c)(ii) at 230. Wisconsin courts have not adopted the ABA sentencing standards. *See, e.g.*, ***Green v. State***, 75 Wis. 2d 631, 644, 250 N.W.2d 305 (1977); ***State v. Johnson***, 178 Wis. 2d 42, 52, 503 N.W.2d 575 (Ct. App. 1993). Whether to impose consecutive sentences is, like all other sentencing decisions, committed to the trial court's discretion. ***Johnson***, 178 Wis. 2d at 52. This court presumes the trial court acted reasonably in imposing consecutive sentences, and Nava has the burden of showing an unreasonable or unjustifiable basis for the sentence. ***Id.*** at 53. In addition to the brutal murder, Nava set four separate fires in the house and endangered the lives of three children. It is self-evident that consecutive sentences are appropriate for these additional, serious crimes.

¶5 Finally, Nava argues that the trial court's comments evince a sentencing methodology that is "closed to individual mitigating factors." *See* ***State v. Ogden***, 199 Wis. 2d 566, 571, 544 N.W.2d 574 (1996). ***Ogden*** prohibits a "mechanistic" approach to sentencing such as never granting Huber privileges for particular crimes. While the sentencing court cannot base its sentence on a preconceived sentencing policy, it is not prohibited from entertaining general predispositions, based on its criminal sentencing experience. ***Id.*** at 572-73. The court's disposition must never be so specific or rigid as to ignore the particular circumstances of the individual offender. ***Id.*** The court's remarks do not evince a preconceived sentencing policy for first-degree intentional homicide, arson or first-degree reckless endangerment. The court focused on the unique facts of this case. The fact that it readily dismissed any proposal for a more lenient sentence does not show predisposition. Rather, it appropriately reflects the aggravated nature of these offenses, Nava's character and the need to protect the public. The court's comment that it would never be appropriate for "any defendant who committed such a crime as these" to walk out of the prison system and live in Mexico as if nothing happened reflects the court's consideration of the specific facts of this case and not a predisposition that takes no account of the individual factors.

By the Court.—Judgment and order affirmed.

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