

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 2009

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. 2007AP578-CR

Cir. Ct. No. 2005CF793

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

REGINALD M. CLYTUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 FINE, J. Reginald M. Clytus appeals a judgment entered after he pled guilty to first-degree reckless homicide, *see* WIS. STAT. § 940.02(1), and attempted armed robbery with the use of force, as a party to the crime, *see* WIS. STAT. §§ 943.32(1)(a), 939.32, 939.05. He also appeals an order denying his

motion for postconviction relief. Clytus claims that the circuit court erroneously exercised its sentencing discretion. We affirm.

I.

¶2 Clytus was charged with first-degree intentional homicide, as a party to the crime, and armed robbery with the use of force, as a party to the crime, for shooting and killing Anthony Boatman. According to the complaint, Clytus's co-actor, Terrance Davis, confessed to the police that he set up a deal to sell a gun and marijuana to Boatman. Davis told the police that he and Clytus decided, however, to rob Boatman instead. According to Davis, after Boatman got into the back of Davis's car, Clytus shot him.

¶3 Clytus also confessed to the police and admitted that he shot Boatman. According to Clytus, after Boatman got into the back of the car, Boatman began to move around and put his hands near his waistband. Clytus told the police that he then turned around and shot Boatman. According to Clytus, after he fired two shots, he "closed his eyes and continued firing at [Boatman] until the gun stopped."

¶4 The case was plea bargained, and, as we have seen, Clytus pled guilty to first-degree reckless homicide and attempted armed robbery with the use of force, as a party to the crime. The circuit court sentenced Clytus to thirty-five years of imprisonment on the first-degree-reckless-homicide charge, with an initial confinement of twenty-five years, and ten years of extended supervision. On the armed-robbery charge, it sentenced Clytus to nine years of imprisonment, with an initial confinement of five years, and four years of extended supervision, concurrent with the homicide sentence.

II.

¶5 Clytus claims that the circuit court erroneously exercised its sentencing discretion because it did not: (1) explain why it imposed the particular durations of confinement and extended supervision pursuant to WIS. STAT. § 973.017(10m) and *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197;¹ or (2) explain how his sentence was the minimum necessary to promote the objectives of sentencing. We disagree.

¶6 Sentencing is within the discretion of the circuit court, and our review is limited to determining whether the circuit court erroneously exercised that discretion. *McCleary v. State*, 49 Wis. 2d 263, 277–278, 182 N.W.2d 512, 519–520 (1971); *see also Gallion*, 2004 WI 42, ¶68, 270 Wis. 2d at 569, 678 N.W.2d at 212 (“circuit court possesses wide discretion in determining what factors are relevant to its sentencing decision”). The three primary factors a sentencing court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633, 639 (1984). The court may also consider the following factors:

¹ WISCONSIN STAT. § 973.017(10m) provides:

(10m) STATEMENT OF REASONS FOR SENTENCING DECISION. (a) The court shall state the reasons for its sentencing decision and, except as provided in par. (b), shall do so in open court and on the record.

(b) If the court determines that it is not in the interest of the defendant for it to state the reasons for its sentencing decision in the defendant’s presence, the court shall state the reasons for its sentencing decision in writing and include the written statement in the record.

“(1) Past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant’s personality, character and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant’s culpability; (7) defendant’s demeanor at trial; (8) defendant’s age, educational background and employment record; (9) defendant’s remorse, repentance and cooperativeness; (10) defendant’s need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention.”

Id., 119 Wis. 2d at 623–624, 350 N.W.2d at 639 (quoted source omitted); *see also Gallion*, 2004 WI 42, ¶¶59–62, 270 Wis. 2d at 565–566, 678 N.W.2d at 211 (applying the main *McCleary* factors—the seriousness of the crime, the defendant’s character, and the need to protect the public—to Gallion’s sentencing). The weight given to each of these factors is within the circuit court’s discretion. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975).

¶7 The nub of Clytus’s argument on appeal is that the circuit court should have directly explained how its analysis of the sentencing factors translated into a specific number of years of confinement and extended supervision. He contends that

at the end of the process, the court should have said something about the durations of confinement and supervision it imposed in terms of why some lower number that the court could choose for illustration was not sufficient. Or, the court should have explained directly why the duration comports with the minimum custody standard. The court should have stated, “I impose a total of 3.5 years of confinement instead of probation and instead of the lesser amount recommended by the prosecutor because _____.”

Clytus is not entitled to this degree of specificity.

¶8 A circuit court properly exercises its sentencing discretion when it makes a statement on the record detailing its reasons for “selecting the particular

sentence imposed.” *Gallion*, 2004 WI 42, ¶5 n.1, 270 Wis. 2d at 544 n.1, 678 N.W.2d at 201 n.1 (quoted source omitted); *see also* WIS. STAT. § 973.017(10m).

It is not, however,

require[d] ... to provide an explanation for the precise number of years chosen. *McCleary* mandates that the court’s sentencing discretion be exercised on a “rational and explainable basis[,]” and such discretion “must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.”

State v. Taylor, 2006 WI 22, ¶30, 289 Wis. 2d 34, 52, 710 N.W.2d 466, 476 (quoting *McCleary*, 49 Wis. 2d at 276–277, 182 N.W.2d at 519) (second set of brackets in *Taylor*); *see also Gallion*, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209 (court must explain general range for sentence imposed). The circuit court’s sentencing comments satisfy this standard.

¶9 The circuit court considered the gravity of the crime, noting that Clytus was the “trigger person” in a shooting “done in an execution style because that person had -- the victim of the offense had no idea that it was going to happen, number one, and no way to get out of the car.” It acknowledged Clytus’s claim that he shot at Boatman because Boatman made a furtive movement, but found that Clytus’s actions were extreme: “[T]he victim made a furtive movement toward his waistband allegedly so then -- and then you fired off seven or eight shots at close range, probably within three, four feet of the victim.” The circuit court commented that, as a result, “another young man’s life was taken ... and that’s ... finite.... There’s just no sentence that can take away the pain of someone having lost a loved one in this type of fashion because it’s so absolutely senseless.”

¶10 The circuit court also considered Clytus’s character, including his apparent lack of a drug or alcohol history, lack of a criminal history, and history of volunteer work. It found that Clytus had a “pro-social life” with “plenty of support,” and determined that there was no reason for him to become involved in drug dealing: “[I]t was your choice to do that.... Your academic and vocational skills would indicate to the Court that you certainly had the ability to further the goals that you set forth for yourself.”

¶11 Finally, the circuit court commented that the need to protect the community was the “number one” factor. It stated that the goal of its sentence was “to protect the community from yourself from further criminal behavior ... along with punishment for yourself for taking the life of another human being.” The circuit court concluded, based on “th[e] objectives [it] laid out,” that “a substantial prison sentence is necessary,” and explained that ten years of extended supervision was warranted “to make sure that you fulfill the needs that you have, make sure that it doesn’t happen again.” The circuit court fully explained Clytus’s sentence and the reasons for it. Further elucidation was not required. *See State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 799–800, 661 N.W.2d 483, 490:

Although we recognize that trial courts should impose “the minimum amount of custody” consistent with the appropriate sentencing factors, “minimum” does not mean “exiguously minimal,” that is, insufficient to accomplish the goals of the criminal justice system—each sentence must navigate the fine line between what is clearly too much time behind bars and what may not be enough. Without an elaborate system of sentencing grids, like there is in the federal system, no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion.

(Internal citation and quoted source omitted.)

By the Court.—Judgment and order affirmed.

Publication in the official reports is not recommended.

