

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 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. 2008AP3179-CR

Cir. Ct. No. 2007CF4828

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT ALLEN TIMM,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DENNIS P. MORONEY and RICHARD J. SANKOVITZ, Judges. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Robert Allen Timm appeals from a judgment of conviction and postconviction order.¹ The only issue on appeal concerns the propriety of the sentencing court’s imposition of a \$300 fine. We affirm.

BACKGROUND

¶2 Timm pled guilty to fleeing from an officer, contrary to WIS. STAT. § 346.04(3) (2007-08).² A violation of § 346.04(3) is a Class I felony. WIS. STAT. § 346.17(3)(a). The potential penalty for a Class I felony is three years and six months of imprisonment or a fine not to exceed \$10,000 or both. WIS. STAT. § 939.50(3)(i). On February 7, 2008, the court imposed a six-month sentence, to be served consecutively to another sentence Timm was serving. The court also imposed a \$300 fine, plus costs and surcharges. The court ordered that 25% of Timm’s prison wages be applied to pay the fine and that the full balance of the fine be paid within six months of his release from prison.³ The court further ordered that if the fine was not paid by that deadline, a consecutive ninety-day sentence would be imposed and the fine would remain outstanding.

¶3 At sentencing, the State recommended that the court impose a six-month sentence, but it did not comment as to whether the sentence should run consecutively to or concurrently with another sentence. In its sentencing

¹ Timm was sentenced by the Honorable Dennis P. Moroney. His postconviction motion was denied by the Honorable Richard J. Sankowitz.

² All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

³ The original judgment of conviction contained an incorrect “due date” of March 7, 2009, for payment of the fine and other obligations. The postconviction court corrected that error in its postconviction decision and an amended judgment of conviction, giving Timm until June 7, 2010 to pay the court-ordered obligations, was entered.

recommendation, the State discussed the facts and circumstances of the crime and Timm's prior criminal record. Timm requested that the court impose a six-month sentence, and he asked that the sentence run concurrently with a twenty-two-month sentence that had been imposed as part of a revocation from a 1997 felony conviction. During his sentencing remarks, Timm's attorney stated the following, concerning Timm's current and future employment:

He was working at the time [of the fleeing]. He was working for himself. He was wiring some coolers. So he was making some money. He's got some electrical background.

He does have a job waiting for him when he gets out, he's indicated to me. He's talked to an employer at Appliance Associates with heating and cooling, so he does have skills.

In his allocution, Timm explained that he fled from the police because he "kind of knew [he] had a parole hold" and he "was having some issues with life, you know, my household at the time." Timm assured the court that he had "gotten a lot of stuff straightened out now" that he was forty-one years old.

¶4 As noted, the court imposed a six-month sentence, to be served consecutively to the revocation sentence. The court acknowledged that it had seen "worse" criminal records, but that Timm had reached the "stage of one's life, to be quite candid ... people start mellowing a little bit and they start figuring out that hey, this is no way to lead one's life." The court noted that "all the jobs are today, in technologically oriented" areas and that Timm's "electronics background" gave him a "niche ... that [he] can take advantage of" if Timm "g[ot] [his] stuff together and figure[d] it out and then put it into practice." The court noted that Timm "should have known better" in 1997 when he committed a prior burglary and that "it's about time you figure out the risk you make for everybody."

¶5 After discussing the facts underlying the fleeing and “the problems it creates for society,” the court identified, as sentencing objectives, “the need to punish” and “deter” Timm, particularly because he was on supervision when the crime was committed. The court also stated that it was considering “the need to rehabilitate ... while deterring” Timm and others from similar criminal conduct. The court then told Timm “it’s time that you understand that you shouldn’t do [criminal] things.” The court then imposed the consecutive six-month sentence stating that Timm should not “get a two-fer” and “[y]ou shouldn’t have [fled] to begin with and plus you were told when you were under supervision that if you did anything wrong you’d be punished by revocation there and [the fleeing] stands on its own.” The court also imposed a \$300 fine to be paid within six months after Timm was released from prison. After imposing the ninety-day sentence if the fine was not timely paid, the court concluded, “[s]o the message should be clear.”

DISCUSSION

¶6 On appeal, Timm argues that the trial court failed to explain why it was imposing a fine and that the trial court failed to determine Timm’s ability to pay the fine. On the face of this record, we reject Timm’s arguments.

A. Standard of Review

¶7 This court’s standard of review of a sentence is well-settled. *State v. Brown*, 2006 WI 131, ¶19, 298 Wis. 2d 37, 725 N.W.2d 262. On appeal, our review is limited to determining if the court erroneously exercised its discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. This court follows a consistent and strong policy against interference with the discretion of the circuit court. *Id.* ¶18. “[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court

is best suited to consider the relevant factors and demeanor of the convicted defendant.”” *Id.* (citation omitted). To obtain relief on appeal, the defendant has the burden to “show some unreasonable or unjustified basis in the record for the sentence imposed.” *State v. Borrell*, 167 Wis. 2d 749, 782, 482 N.W.2d 883 (1992), *overruled on other grounds by State v. Greve*, 2004 WI 69, 272 Wis. 2d 444, 681 N.W.2d 47. If the sentencing court does not make a specific finding necessary to support the sentence imposed, this court will search the record for facts to support the sentence as a proper discretionary act. *See State v. McCleary*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

B. Inadequate Explanation

¶8 Timm first argues that the court did not adequately explain why it imposed the \$300 fine. Timm asserts that the court gave no reasons for the fine and did not explain why imposition of the fine advanced the court’s sentencing objectives. We disagree.

¶9 A sentencing court is not required to provide separate rationales for the imprisonment and fine components of a sentence. *See State v. Kuechler*, 2003 WI App 245, ¶10, 268 Wis. 2d 192, 673 N.W.2d 335. A court’s sentencing comments apply to both components of a sentence and “[i]t is sufficient that, in the exercise of its sentencing discretion, the court provides reasoning.” *Id.*

¶10 Applying that standard to this case, we conclude that the court adequately explained why it was imposing a fine. The court’s sentencing objectives were punishment, deterrence, and rehabilitation. The court emphasized the need for Timm to “get [his] stuff together” and stop “screwing off” now that he was forty-one years old. By imposing a consecutive sentence, the court refused to give Timm a “two-fer.” The court stressed the need for Timm to be held

responsible for the consequences of his actions, and the payment of a fine is a reasonable part of such accountability. The sentencing court knew that Timm had significant “abilities” in the “electronics” field “where all the jobs are today” and that he had “a job waiting for him when he gets out” of prison. The court could reasonably conclude that Timm would not be held fully accountable for his crime unless an economic penalty, in the form of a \$300 fine, was imposed in addition to the six-month sentence. Although the court did not expressly identify its reasons for imposing the fine, a discrete justification is not required. *See id.* We agree with the State that, to the extent that the court did not “explicitly articulate the role that the payment of a modest \$300 fine would play” in Timm’s sentence, it is “readily inferable” that the fine represented an “economic form of accountability.” Therefore, the court properly exercised its discretion when it imposed the \$300 fine. *See McCleary*, 49 Wis. 2d at 282.

C. Ability to Pay

¶11 Timm contends that the court did not determine whether he had the ability to pay the \$300 fine. As we have observed several times, the sentencing court knew of Timm’s employment skills and the promise of a job upon his release from prison. The court did not make the fine fully payable until several months after Timm’s release from prison, thereby giving him several months of non-prison employment in which to meet the financial obligation. Because the record contains facts that show Timm’s ability to pay a fine, the court did not erroneously exercise its discretion. *See id.* If Timm finds himself unable to pay the fine by the deadline, he may seek review of the fine at that time. *See State v. Perez*, 170 Wis. 2d 130, 145, 487 N.W.2d 630 (Ct. App. 1992); *see also State v. Milashoski*, 163 Wis. 2d 72, 88-89, 471 N.W.2d 42 (1991).

By the Court.—Judgment and order affirmed.

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

