

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 9, 2010**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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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. 2009AP1795-CR**

**Cir. Ct. No. 2007CF1016**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ADRIANNA A. COVELLI,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Kenosha County: MARY K. WAGNER, Judge. *Affirmed.*

Before Neubauer, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Adrianna A. Covelli appeals from a judgment convicting her of false imprisonment, as party to a crime (PTAC) and by use of a dangerous weapon, and of felony possession of a firearm and from a

postconviction order denying her motion for sentence modification. She contends the trial court failed either to consider or to give greater weight to various mitigating factors in crafting her sentence. We conclude that the court considered those factors but, in a proper exercise of discretion, either made no allowance for them or deemed them outweighed by others that justified the sentence imposed. We affirm the judgment and order.

¶2 According to the complaint, Covelli's boyfriend, Jay Wilson, drove Evangeline Graves, a friend of Covelli's, to Wilson's house ostensibly to see Covelli. Once there, Covelli and/or Wilson told Graves that Wilson recently had been robbed and believed Graves had set it up. The pair hogtied Graves. Covelli sat on her, holding a pistol and knife to her head and neck, while Wilson repeatedly shot her at close range with a paintball gun. When Wilson left to buy crack cocaine, Covelli refused to release Graves because she said Wilson would kill them both. Wilson later had sex with Graves while Covelli watched. Wilson and Covelli then forced Graves into the back seat of a car, Covelli driving and Wilson training a gun on Graves. Graves eventually escaped.

¶3 The State filed an eight-count complaint against Covelli. Concerns arose regarding Covelli's established history of mental health issues and drug dependence. A court-ordered forensic examination determined that a plea of not guilty by reason of mental disease or defect was unwarranted. A competency examination found her competent to stand trial. Pursuant to a negotiated plea, Covelli pled no contest to false imprisonment as PTAC and guilty to felony possession of a firearm. One count of second-degree reckless endangerment as PTAC by use of a dangerous weapon was dismissed and read in for sentencing. The remaining charges were dismissed outright.

¶4 Sentencing recommendations varied widely. Covelli requested a time-served disposition of her 452 days custodial credit. The State proposed no specific term but asked the court to consider both the “enormity of the crime” and Covelli’s willing cooperation in the case against Wilson. The presentence investigation (PSI) author recommended three and a half to four and a half years’ initial confinement plus two years’ extended supervision on the false imprisonment charge, and one to two years’ initial confinement plus three to four years’ extended supervision on the firearm possession count—a total sentence of nine and a half to twelve and a half years on the two counts. The court went further. It imposed a seventeen-year total sentence, seven years’ initial confinement followed by ten years’ extended supervision.<sup>1</sup>

¶5 Covelli filed a postconviction motion seeking sentence modification. She contended a lesser sentence was warranted because the court largely overlooked mitigating factors, her character and her lesser culpability than Wilson’s and disregarded the PSI’s contents and recommendations.

¶6 At the hearing on the motion, Covelli’s counsel began her argument by repeating a misstatement made in the written motion regarding a portion of the PSI recommendation. The misstatement was to the effect that the PSI recommended only three and a half to four and a half *months*, rather than *years*, of initial confinement on the false imprisonment charge. This colloquy ensued:

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<sup>1</sup> More particularly, the court sentenced Covelli to ten years’ imprisonment on the firearm possession charge, bifurcated as five years’ initial incarceration and five years’ extended supervision, and to a consecutive seven-year term on the false imprisonment charge, bifurcated as two years’ initial confinement and five years’ extended supervision.

THE COURT: Three-and-a-half years.

[DEFENSE COUNSEL]: I have months.

THE COURT: I know you do. I crossed it off [in the written motion], but it's not true. The presentence recommends three years and six months to four years and six months.

¶7 The court noted that the disparity between the PSI recommendation and the actual sentence on that count therefore was just six months—far less than the motion suggested. The court also stated that, while it may not have expressly referred to the PSI, it considered the report and the required sentencing factors, and believed the sentence to be fair and reasonable. The court denied the motion, and Covelli brings this appeal.

¶8 Covelli claims the trial court erroneously exercised its sentencing discretion generally and in imposing the length of the sentence it did specifically. She claims that the court gave inadequate weight to mitigating factors, her character and her degree of culpability; disregarded the PSI; and failed to meaningfully explain the length of the sentence. We disagree.

¶9 Sentencing is left to the discretion of the trial court and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. When the trial court demonstrates a proper exercise of discretion at sentencing, appellate courts have a strong policy against interference with that discretion. *Id.*, ¶18. The burden on a defendant to show an erroneous exercise of discretion is heavy; the court's sentence is presumptively reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. A strong, consistent policy exists against interference with the trial court's sentencing discretion because that

court is best suited to consider the relevant factors and demeanor of the convicted defendant. *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984).

¶10 In imposing a sentence the trial court must consider the gravity of the offense, the character of the offender, and the need to protect the public. *Id.* at 623. It also may consider the defendant's past criminal record, history of undesirable behavior patterns, personality, character, social traits, remorse, cooperativeness and degree of culpability; the results of the PSI; the aggravated nature of the crime; the need for close rehabilitative control; and the rights of the public. *State v. Lewandowski*, 122 Wis. 2d 759, 763, 364 N.W.2d 550 (Ct. App. 1985). The weight the trial court assigns to each factor is a discretionary determination. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶11 A review of the trial court's sentencing decision confirms that it considered the necessary sentencing factors, giving the greatest weight to the severity of Covelli's drug problem and to the seriousness of the offense. It noted that Covelli had "a significant drug problem that is not cured by simply sitting without drugs.... [Y]ou have serious treatment needs that expand beyond having a kind uncle say: You can come and stay with me. They're far more serious than that." It also concluded that any effort Covelli extended on Graves' behalf "certainly doesn't diminish the fact that this was a heinous crime. Heinous." The court stated it could not comprehend Covelli's claim that Graves could see by Covelli's eyes that the assault "was an act" or was "because we were friends." The court deemed the offense "so significant and so serious" and Covelli's treatment needs so great that it was important to impose incarceration for a "somewhat significant period of time."

¶12 Covelli insists, however, that the trial court gave short shrift to mitigating factors. A trial court may not employ a preconceived sentencing policy that is “closed to individual mitigating factors.” *State v. Ogdén*, 199 Wis. 2d 566, 571, 544 N.W.2d 574 (1996) (citation omitted). A sentence that fits the crime, and not the criminal, is improper. *Id.*

¶13 The court here did not overlook mitigating factors. It acknowledged Covelli’s undisputed mental illness; her long drug-related history of inappropriate behavior; and the many treatment, counseling and family resources available to her. In addition, Covelli’s counsel spoke on the record at length about Covelli’s physical problems from a motor vehicle accident, a series of abusive relationships, including with Wilson, and her participation in the crime out of fear for her own life. The court considered a letter from Covelli’s father and Covelli’s own statement of remorse. It implicitly noted Covelli’s lesser role in the offense when it acknowledged that she was “a big part in why [Graves] probably isn’t dead and that’s good.” The court also recognized that Graves had forgiven Covelli and that Covelli already had spent “a long time in jail.”

¶14 In the court’s view, however, any extenuating circumstances did not outweigh other concerns. The court explained that prison was necessary in light of Covelli’s many years of “inappropriate behavior” despite having many treatment opportunities and resources. It found the gravity exacerbated by the fact that the offense was perpetrated on a friend. Thus, the court considered these factors but viewed them as less mitigating than Covelli does.

¶15 Covelli also contends the trial court must have disregarded the PSI content because it did not explain its departure from the PSI recommendations. We disagree. First, the court expressly stated at the postconviction motion hearing

that it took the PSI into account. Second, the court was not bound to adopt the PSI's sentencing recommendation. See *State v. Hall*, 2002 WI App 108, ¶16, 255 Wis. 2d 662, 648 N.W.2d 41. Third, Covelli's counsel inexplicably reiterates here her "months/years" understatement of the recommended penalty. Again, the trial court's departure from the recommendation thus is not as stark as Covelli suggests. Finally, the court had before it the information the PSI provided regardless of whether it said it read it in the PSI. The sentence reflected a proper exercise of discretion.

¶16 Covelli also argues that the court erroneously exercised its discretion in denying her postconviction motion to modify the sentence. She reiterates that the various factors should have been weighted differently and that the court did not sufficiently address that the sentence exceeded recommendations.

¶17 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). Our principal focus is whether the trial court erroneously exercised its sentencing discretion.

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).

¶18 The record reflects that the court considered relevant factors, both mitigating and aggravating. It explained the general range of the sentence,

choosing the term in light of Covelli’s rehabilitative needs on the one hand and the seriousness of the offense on the other. The court explained the factors it deemed most salient and provided a “rational and explainable basis” for the sentence it imposed. *See Gallion*, 270 Wis. 2d 535, ¶39 (citation omitted).

¶19 The record of the postconviction motion hearing confirms the court’s proper exercise of discretion. Covelli has not established an unreasonable or unjustifiable basis in the record for the sentence imposed. That the court might have exercised its discretion differently at this juncture does not constitute an erroneous exercise of discretion.

*By the Court.*—Judgment and order affirmed.

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



