COURT OF APPEALS
DECISION
DATED AND FILED

July 1, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2778-CR **Cir. Ct. No. 01 CF 6389**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER C. JOHNSON,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Christopher C. Johnson appeals from a judgment entered after he pled guilty to theft from a person as party to a crime, contrary to WIS. STAT. §§ 943.20(1)(a) and 939.05 (2001-02).[1] He also appeals from an order

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

denying his postconviction motion seeking sentencing modification. Johnson claims: (1) the sentence imposed is unconstitutional because it violates his right to travel; and (2) the sentence imposed is unduly harsh and excessive. Because the trial court's sentence does not violate Johnson's constitutional rights and because the sentence imposed is not unduly harsh or excessive, we affirm.

I. BACKGROUND

¶2 On November 25, 2001, Johnson was arrested for loitering/illegal drug activity in the 3200 block of West Wells Street in the City of Milwaukee. At that time, the police discovered a Wells Fargo ATM TYME card in Johnson's pocket. Johnson advised the officers that he found the card on the street a couple of days ago. The card belonged to Peter Markofski. When a police detective interviewed Markofski, he related the following events. On November 24, 2001, Markofski was in his car in the area of 3300 West Wells Street and observed Johnson. Markofski owed Johnson $40. Johnson saw Markofski and threw a rock or a brick at the windshield of his vehicle. Markofski stopped his car. Johnson approached yelling about the money. Johnson's accomplice also approached the car yelling. Markofski told Johnson he had the $40. Johnson yelled he wanted more than the $40; he unlocked the front passenger seat and entered the car. The accomplice also entered the car through the rear door and sat behind Markofski. Johnson then took the ignition keys and Markofski gave Johnson the $40. Johnson and the accomplice began punching Markofski and continued yelling at him. The accomplice then reached into Markofski's pocket and took his TYME card. Johnson then exited the car and began kicking Markofski's face and eyes. Markofski asked for his keys back, to which Johnson responded: "Fuck you, walk home and get me more money." At some point, his keys were returned and he

proceeded directly to the hospital for treatment. He received thirty-six stitches to close four lacerations just outside his right eye.

¶3 As a result of this incident, Johnson was charged with two counts of bail jumping (because this incident occurred while he was out on bail from a previous incident), robbery with use of force as party to a crime and substantial battery as party to a crime. Johnson entered into a plea agreement wherein he would plead guilty to the robbery count and the remaining counts would be dismissed, although each dismissed count would be read-in for purposes of sentencing.

¶4 During the sentencing, the court heard from David Karademas. Karademas had been the victim of Johnson's illegal activities in a previous incident. Karademas advised the court that he came as a representative of the neighborhood, which Johnson was terrorizing. Karademas told the sentencing court that he had spent tens of thousands of dollars on security measures, including dogs and security guards, to address the problems caused by Johnson's actions. Karademas asked the sentencing court to "ban" Johnson from the area.

¶5 The trial court imposed the maximum sentence of ten years with five years' initial confinement and five years' extended supervision. As a condition of the supervision, the trial court ordered Johnson to have no contact with the victim, Markofski, and to not cross into the area a mile and a half to two miles east and west, and a mile and a half, three-quarters of a mile north and south of the area where this crime occurred.

¶6 Johnson filed a postconviction motion alleging that the "ban" imposed by the trial court violated his constitutional right to travel and that the

sentence imposed was unduly harsh and excessive. The trial court denied the motion. Johnson now appeals.

II. DISCUSSION

A. Constitutional Issue.

¶7 Johnson argues that the trial court's condition banning him from the two-mile square area violates his constitutional right to travel. He claims the area he is banned from is "very broad" and contains a "number of social service agencies," "a vehicle emission testing station," and "a portion of Milwaukee Area Community College." He also suggests that accessing some of the businesses just east of the banned area would cause him to "have to cross over the boundary on three sides." Because we agree with the trial court that the supervisory condition imposed does not violate Johnson's constitutional right to travel, we reject his argument.

¶8 Trial courts are granted broad discretion in determining conditions necessary for supervision; such discretion is subject to a standard of reasonableness and appropriateness. ***State v. Beiersdorf***, 208 Wis. 2d 492, 502, 561 N.W.2d 749 (Ct. App. 1997). The condition imposed does not need to relate directly to the crime committed if the condition furthers the defendant's rehabilitation or *protects a state or community interest*. ***State v. Miller***, 175 Wis. 2d 204, 208, 499 N.W.2d 215 (Ct. App. 1993). In addition, review of constitutional questions are subject to an independent review by this court. ***State v. Lo***, 228 Wis. 2d 531, 534, 599 N.W.2d 659 (Ct. App. 1999).

¶9 We conclude that the supervisory condition imposed on Johnson was not overly broad or unconstitutional. Rather, the condition imposed was

reasonable and appropriate under the circumstances. The record demonstrates that Johnson engaged in a pattern of conduct, which "terrorized" a particular neighborhood. He engaged in loitering and drug sales and was a menace to the community. He violated a no contact order and violated conditions of bail. His record revealed that two additional cases of battery were dismissed because the victims did not show up for court. A representative and property owner of the area appeared before the sentencing court to provide information as to Johnson's actions and the security measures taken to protect people from Johnson. Johnson was described as a "monster" who had "no respect for authority."

¶10 Given these facts and circumstances, we conclude that the supervisory condition banning Johnson from the area was not unconstitutional. It was reasonable and appropriate. It included a relatively small area of the city. Although the condition may make it inconvenient in some circumstances for Johnson—he may have to travel elsewhere to shop or patronize particular businesses—this results in no more than an inconvenience. *See* ***State v. Nienhardt***, 196 Wis. 2d 161, 169, 537 N.W.2d 123 (Ct. App. 1995) (defendant's banishment from the City of Cedarburg did not violate constitutional right).

¶11 The condition imposed on Johnson serves a legitimate protective purpose—to give some peace of mind to the community members living in the area previously "terrorized" by "a monster." The supervisory condition provides a margin of "territorial safety" where victims "can live in peace." ***Predick v. O'Connor***, 2003 WI App 46, ¶20, 260 Wis. 2d 323, 660 N.W.2d 1 (holding that a condition banning the defendant from an entire county did not unduly impinge on the defendant's constitutionally protected activities). The supervisory condition does not violate Johnson's constitutional right to travel; it merely inconveniences him. Moreover, as a convicted felon, Johnson is not entitled to the same degree of

liberty as those individuals who have not been convicted of a crime. ***State v. Oakley***, 2001 WI 103, ¶17, 245 Wis. 2d 447, 629 N.W.2d 200.

B. Sentence.

¶12 Johnson also complains that the sentence imposed was unduly harsh and excessive and that the trial court should not have relied on the testimony of Karademas. We are not persuaded.

¶13 Our standard of review when reviewing a criminal sentencing is whether or not the trial court erroneously exercised its discretion. ***State v. Plymesser***, 172 Wis. 2d 583, 585-86 n.1, 493 N.W.2d 367 (1992). Indeed, there is a strong policy against an appellate court interfering with a trial court's sentencing determination and, an appellate court must presume that the trial court acted reasonably. ***State v. Thompson***, 146 Wis. 2d 554, 564, 431 N.W.2d 716 (Ct. App. 1988). When a defendant argues that his or her sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion "only where the sentence 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 v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶14 The sentencing court must consider three primary factors: (1) the gravity of the offense; (2) the character of the offender; and (3) the need to protect the public. ***State v. Harris***, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984). The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation results; the viciousness or aggravated nature of the defendant's crime; the degree of the

defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the needs and rights of the public; and, the length of the defendant's pretrial detention. ***State v. Jones***, 151 Wis. 2d 488, 495-96, 444 N.W.2d 760 (Ct. App. 1989). The weight to be given to each of the factors is within the trial court's discretion. ***State v. Curbello-Rodriguez***, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984).

¶15 Applying these factors to the case at hand, we conclude the trial court properly exercised its discretion and that the sentence imposed was not unduly harsh or excessive. First, with respect to the information provided to the court by Karademas, we conclude that Johnson had no right to raise this issue. Not only did he not object to the statements made by Karademas, but he affirmatively stated that everything Karademas provided was accurate information. Accordingly, there is no merit to this complaint.

¶16 Second, the trial court imposed the maximum sentence which, according to ***Ocanas***, is not excessive or unduly harsh. In applying the particular facts here, we agree that the sentence imposed was not excessive. Johnson's conduct and pattern of behavior was reprehensible. The crime was "vicious and unprovoked" and resulted in serious bodily injury over a $40 debt, which was repaid. Five years' confinement followed by five years' supervision is not shocking to public sentiment under the facts and circumstances presented in this case.

By the Court.—Judgment and order affirmed.

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