

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 2003

Cornelia G. Clark
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. 03-0130-CR
STATE OF WISCONSIN**

Cir. Ct. No. 02CF000139

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DARRYL H. STEGALL,

DEFENDANT-APPELLANT.

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

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Darryl H. Stegall appeals from a judgment entered after he pled guilty to one count of first-degree recklessly endangering safety. See

WIS. STAT. § 941.30(1) (2001–2002).¹ He also appeals from an order denying his postconviction motion for sentence modification. Stegall claims that the trial court erroneously exercised its discretion when it: (1) relied on an improper sentencing factor; (2) did not explain why the maximum sentence was appropriate; (3) failed to consider favorable character evidence; and (4) imposed an unreasonable condition of extended supervision. We affirm.

I.

¶2 Stegall was charged with recklessly endangering safety for stabbing Muhannad Salim during a fight at Papa Rosa Pizza. According to the complaint, Stegall went to Papa Rosa Pizza after his girlfriend was fired from the restaurant. Stegall confronted Yasir Arabiyat, an employee, in the parking lot about his girlfriend. Arabiyat threw a pizza bag at Stegall and ran into the restaurant. As Arabiyat ran behind the counter of the restaurant, his friend, Salim, attempted to come between Arabiyat and Stegall. Stegall stabbed Salim twice in the back.

¶3 Stegall pled guilty in exchange for the State’s recommendation of thirty to thirty-six months of initial confinement and six years of extended supervision. He addressed the trial court at sentencing to clarify the status of his personal relationships:

[STEGALL’S ATTORNEY]: He does have a child. She is almost two years old. [He is] very disappointed that he’s going to be taken away from her.

THE COURT: He’s already away from her if she’s in Texas with her mother.

¹ All references to the Wisconsin Statutes are to the 2001–2002 version unless otherwise noted.

THE DEFENDANT: My daughter actually -- I've had multiple relationships. My daughter actually lives with me right now and her mother.

THE COURT: I thought the daughter's mother is Nicole.

THE DEFENDANT: Nicole lives with me. Christy is from Texas. Nicole Taylor is the mother of my child.

THE COURT: The mother of both?

THE DEFENDANT: Both. I have one on the way.

THE COURT: It's not just your child.

THE DEFENDANT: It's our child.

THE COURT: So Nicole still lives with you along with Jamie?

THE DEFENDANT: Jamie does not reside with me any more.

THE COURT: Jamie was living with you and Nicole?

THE DEFENDANT: Yes, she was.

THE COURT: Until the incident for which you are facing charges right now, correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

The trial court sentenced Stegall to ten years in prison, with five years of confinement and five years of extended supervision, consecutive to any other sentence. This sentence was the statutory maximum for Stegall's crime when he committed it. *See* WIS. STAT. §§ 941.30(1) and 939.50(3)(d). The trial court also imposed conditions on Stegall's term of extended supervision, including the requirement that he "provide financial support for his children."

¶4 Stegall filed a postconviction motion for sentence modification, alleging that the trial court erroneously exercised its sentencing discretion. The trial court denied the motion, concluding that: “The basis for Stegall’s sentence was fully articulated on the record.”

II.

¶5 First, Stegall alleges that the trial court erroneously exercised its discretion when it considered at sentencing his alleged relationships with more than one woman. Specifically, he points to the following comments by the trial court:

You’re living with Nicole. She’s not even the reason that you went in January and committed the crime against Mr. Salim.

She’s the mother of the child that you two brought into this world. She’s pregnant with another of your children. But Christy is the one who’s the girlfriend for whom you go and commit this crime with Mr. Salim. And you’re simultaneously living with Nicole and Jamie who posted the bail here for you, and you failed to mention that fact to the presentence reporter at any time during that interview.

I note as well that you tell me that you’re living with Jamie or that you’re living with -- you moved north to avoid the problems here that you seem to have encountered with Nicole, but Nicole is there with you. And the only reason you are not living with Jamie right now is because probably I assume you’re under a no[-]contact order with her if nothing else because you have a battery and bail jumping charge pending in domestic violence court.

So within a space of six months or less we have you involved in living with ... three different women, two simultaneously, and you can’t keep your violence under control. You were violent in your juvenile years as detailed not only by your record here ... but other incidents mentioned in the presentence report.

Stegall claims that these comments were improper because his alleged relationships “had no bearing on his criminal conduct nor relation to any permissible sentencing factor.”²

¶6 Sentencing is committed to the discretion of the trial court and appellate review is limited to determining whether the trial court erroneously exercised its discretion. *State v. J.E.B.*, 161 Wis. 2d 655, 661, 469 N.W.2d 192, 195 (Ct. App. 1991). A strong public policy exists against interfering with the trial court’s discretion in determining sentences and the trial court is presumed to have acted reasonably. *State v. Wickstrom*, 118 Wis. 2d 339, 354, 348 N.W.2d 183, 191 (Ct. App. 1984). 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, 895 (1992).

¶7 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) Past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant’s

² Stegall also claims that the trial court made assumptions that were “factually ... immaterial.” The State alleges that Stegall waived this claim because he did not object to any alleged inaccuracy of the court’s remarks at sentencing. We disagree with the State’s characterization of the issue. While Stegall challenges the accuracy of the sentencing court’s statements, his main argument is that his relationships were an inappropriate sentencing factor. He raised this issue before the trial court in his postconviction motion. Accordingly, we address it on appeal. We assume for the purpose of this opinion, however, that the trial court’s assumptions about Stegall’s relationships with other women were accurate. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed). Indeed, the sentencing court, rejecting Stegall’s postconviction motion, specifically noted that his “assertion that the court did not have accurate information about his personal relationships is completely unsupported.” We agree.

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). The weight to be given to each of these factors is within the trial court's discretion. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975).

¶8 An examination of the record shows that the comments about Stegall's relationships were, in context, *de minimis* and proper. At sentencing, the trial court first considered the gravity of the offense, noting that Stegall's actions were "serious, ... uncalled for, unprovoked, [and] violent." Next, the trial court considered Stegall's character. It considered Stegall's violent criminal record and observed that Stegall had been on probation five times without success: "And nothing that's been done in the community on supervision had an impact on you ... in helping you or in convincing you that we will not tolerate violence." As noted, the trial court looked at Stegall's negative pattern of behavior in maintaining relationships with more than one woman and commented that Stegall had recently been charged with battery and bail jumping in domestic violence court.

¶9 Finally, the trial court considered the need to protect the community from Stegall's violent behavior and inability to conform his conduct to the law. It implicitly determined that he was not an appropriate candidate for probation, remarking:

Even while this case is pending when it's in your best interest for purposes of sentencing to control your

violence, you aren't able to and you pick up new charges.... There's a need here to punish you, to stop you, and to impress upon you that this community will no longer tolerate your violence.

In isolation, the sentencing court's comments about Stegall's relationships with three women raise understandable concerns. In context, however, it is apparent that the trial court placed little, if any, emphasis on Stegall's relationships. Moreover, the remarks were relevant to the assessment of Stegall's character and consistent with his own disclosures at sentencing. See *Elias v. State*, 93 Wis. 2d 278, 285, 286 N.W.2d 559, 562 (1980) ("The responsibility of the sentencing court is to acquire full knowledge of the character and behavior pattern of the convicted defendant before imposing sentence."). The trial court reasonably weighed the relationship information that Stegall provided with the other sentencing factors.

¶10 Next, Stegall claims that the trial court erroneously exercised its sentencing discretion because it did not explain why a maximum sentence was appropriate. The record belies this claim. The trial court specifically commented that it was imposing the maximum sentence because of the additional charges Stegall obtained while this case was pending:

He's not eligible for the challenge incarceration program due to the nature of this crime and his complete prior failure on probation.

The fact that you picked up a new assaultive crime while this case was pending has convinced me to exceed the State's recommendation and to divide it differently to protect this community from what appears to be violence that you refuse in every respect to limit and control.

(Emphasis added.) The record clearly shows that the trial court considered the appropriate factors and explained why the maximum sentence should be imposed.

¶11 Stegall further claims that the trial court erroneously exercised its discretion because it “disregarded” favorable character evidence, including Stegall’s: (1) remorse and apology; (2) cooperation with the authorities; (3) payment of restitution; and (4) intelligence and “remarkable skills.” Stegall claims that this alleged error occurred because the trial court “ignored crucial aspects of [his] character at sentencing [when] it failed to review and incorporate the [presentence-investigation report].” We disagree.

¶12 Trial courts do not blindly accept or adopt sentencing recommendations from any particular source. *State v. Johnson*, 158 Wis. 2d 458, 465, 463 N.W.2d 352, 355 (Ct. App. 1990). Rather, a trial court must independently determine that a particular sentence is appropriate in light of the goals of sentencing as applied to the facts of the case. *Id.*

¶13 In this case, contrary to Stegall’s assertion, the trial court did consider Stegall’s “positive” character traits. At the beginning of sentencing the trial court noted that it had “thoroughly” reviewed the presentence-investigation report. Moreover, the sentencing transcript shows that the trial court explicitly considered Stegall’s intelligence, remorse, and willingness to pay restitution. The record is clear that the trial court rejected the State’s sentencing recommendation because it was inconsistent with its balancing and weighing of the other sentencing factors set out above. Indeed, the trial court denied Stegall’s postconviction motion because his “utter failure on five probations, his continuing assaultive and violent behavior, and the absolute need to protect the community far outweighed the favorable character evidence available.” We agree. The trial court’s determination that Stegall’s negative character traits and the need to protect the community outweighed his “positive” character traits does not make the trial court’s sentence an erroneous exercise of discretion.

¶14 Finally, Stegall alleges that the condition that he pay child support is unreasonable because: (1) there is no evidence that he was not supporting his children; and (2) the condition is not related to his crime. Again, we disagree. The trial court denied Stegall’s postconviction motion on this issue because it found the condition reasonable:

The court did not impose an “order for child support” -- it ordered [Stegall] “to continue to provide financial support for his children.” The defendant admitted that he had a daughter with Nicole Taylor and another one on the way. The court was entitled to impose reasonable conditions of extended supervision, and it did not erroneously exercise its discretion in this regard.

(Record references omitted.) We agree. It is within the broad discretion of the trial court to impose appropriate conditions on probation. *State v. Carrizales*, 191 Wis. 2d 85, 93, 528 N.W.2d 29, 31 (Ct. App. 1995). Here, Stegall disclosed that he had one child and another on the way. Certainly it was constructive and reasonable for the trial court to attempt to motivate Stegall to accept his responsibility to financially support his children.

¶15 Whether, in the absence of a formal family-court order for child support, Stegall’s violation of the condition to “continue to provide financial support for his children” could ever be the basis for revocation is not before us in this appeal. “An order for child support,” which the trial court did not say, arguably could create an unlawful condition. A condition to “continue to provide financial support” for children, which the trial court did establish, goes directly to Stegall’s recognition of moral and financial responsibility for his children—a recognition clearly connected to his rehabilitation. See *State v. Simonetto*, 2000 WI App 17, ¶6, 232 Wis. 2d 315, 606 N.W.2d 275 (whether a condition is

reasonable depends on whether it supports the defendant's rehabilitation and the community's protection).³

By the Court.—Judgment and order affirmed.

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

³ Stegall also alleges that the trial court erred when it denied his postconviction motion. For the reasons stated above, we conclude that the trial court properly denied Stegall's postconviction motion.

