

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 2004

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. 03-2044-CR
STATE OF WISCONSIN**

Cir. Ct. No. 02CF001049

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES ARNOLD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
PATRICK C. HAUGHNEY, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. James Arnold appeals from the judgment of conviction entered against him. He argues on appeal that the trial court improperly denied his motion to conduct an in camera inspection of the victim's counseling records prior to sentencing. Because we conclude that the trial court did not err, we affirm.

¶2 Arnold pled guilty to one count of second-degree sexual assault of a child under the age of sixteen. Arnold, who was thirty-three at the time of the incident, admitted to having sexual intercourse with a fourteen-year-old girl. The court sentenced him to fifteen years of extended supervision and fifteen years of initial confinement. Prior to sentencing, defense counsel asked the court to conduct an in camera review of the victim's counseling records. Defense counsel wanted to rebut the claims made by the victim's family of the harm she had suffered as a result of the assault, by showing that many of these claimed harms existed before the assault. The court denied the motion.

¶3 On appeal, Arnold claims that the court violated his right to due process by denying this motion because it then relied on inaccurate information when it sentenced him. "Our review of sentencing decisions is limited to determining whether the trial court acted within the ambit of its discretion. A defendant alleging that a sentencing decision was based on inaccurate information must show that: (1) the information was inaccurate, and, (2) the trial court actually relied on that inaccurate information in sentencing." *State v. Harris*, 174 Wis. 2d 367, 378, 497 N.W.2d 742 (Ct. App. 1993) (citations omitted). The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender and the need for the protection of the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The discretion of the sentencing judge must be exercised in a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, ___ Wis. 2d ___, 678 N.W.2d 197. The weight to be given the various factors is within the trial court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

¶4 Arnold argues that the allegations made by the victim's family were a primary factor in the court's sentencing determination, and that the court was

influenced by, and relied upon, the information about the severe emotional and psychological harm done to the victim. We disagree.

¶5 The record establishes that the court relied primarily on the gravity of the offense and the need to protect the public. Although the court addressed each of the factors, the court stated that its sentence was based “primarily and almost exclusively on the seriousness of the offense.” While the court briefly mentioned the effect on the victim, this was neither its primary nor even a substantial factor in its sentencing decision. We conclude that Arnold has not demonstrated that the court relied on the information he claims was inaccurate. The court, therefore, did not err when it denied his motion to conduct an in camera review of the victim’s counseling records.

¶6 Arnold also argues that the sentence itself was an erroneous exercise of the trial court’s discretion. Specifically, he asserts that the court failed to articulate its reasons for the length of the sentence, that it gave undue weight to one factor, and that the sentence was excessively harsh. We disagree with all three assertions.

¶7 Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with the discretion. *State v. Mosley*, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). The trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *Id.* Arnold argues that the court did not draw a connection between the thirty-year sentence imposed and the sentencing factors. The record does not support this contention. After addressing the sentencing factors, the court stated that a “substantial period of time when you are out of

society and out into the state prison system is necessary.” The court explained why a substantial sentence was necessary.

¶8 Arnold next argues that the court gave undue weight to one factor. As we have already discussed, however, the court considered each of the factors and then concluded that the severity of the offense was the main focus of its decision. This was not an erroneous exercise of discretion. Finally, Arnold argues that the sentence was unduly harsh. The sentence, however, was within the maximum allowed by our legislature for this offense. We cannot conclude that this sentence was too harsh. Consequently, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

