

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 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. 03-3244-CR

Cir. Ct. No. 02CM009637

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DALLAS D. LUCAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Dallas D. Lucas appeals from the judgment of conviction for two counts of criminal damage to property and one count of disorderly conduct, all with the habitual criminality enhancement, and from the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

order denying his motion for postconviction relief. He argues that the circuit court erroneously exercised sentencing discretion and failed to follow the statutory procedure for determining restitution. This court affirms.

¶2 According to the criminal complaint, on November 23, 2002, Lucas was disorderly and damaged property of both his girlfriend and her landlord when he became upset “because she was breaking off their relationship and wanted him to move out.” Lucas pled no contest to one of the criminal damage counts and guilty to the two other counts, all as a habitual criminal. His maximum total sentence could have been nine years in prison; the court ordered consecutive sentences totaling eight years.

¶3 Lucas argues that his aggregate eight-year sentence is “harsh and excessive,” given that his crimes stemmed from a single incident, which he terms “an adult tantrum prompted by a victim’s suspected infidelity, that damaged only property.” He further contends that the court failed to adequately articulate any rationale justifying such consecutive and lengthy sentences. He explains:

The trial court’s rationale here does not meet the ... standard [of *State v. Hall*, 2002 WI App 108, 255 Wis. 2d 662, 648 N.W.2d 41]; the near-maximum consecutive sentences do not represent the minimum amount of custody consistent with the appropriate factors. Although the defendant’s conduct was aggravated, and his prior record lengthy, the conduct involved all transpired in a single incident. Concurrent sentences should have been at least considered. The trial court did not articulate a basis for ordering *all* sentences to run consecutively.

The trial court’s rationale was deficient in other significant ways. Judge McMahon never articulated a rationale for the length of any particular sentence. Were both criminal damage counts equally serious? The sentences imposed indicate they were but the facts suggest otherwise.

Additionally, Lucas maintains that the court “refused to consider the victim’s purported infidelity as a mitigating factor,” and that but for his lengthy record, he only would have been facing “at most three ordinary misdemeanors.”

¶4 A circuit court properly exercises sentencing discretion when it considers the facts of record under the relevant law, addresses the required sentencing criteria, and reaches a reasoned and legally sound conclusion. *See McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). The court must consider the nature of each offense, the character of the offender, and the need for public protection. *State v. Mosley*, 201 Wis. 2d 36, 43-44, 547 N.W.2d 806 (Ct. App. 1996).

¶5 This court reviews a circuit court’s sentencing conclusion under the erroneous-exercise-of-discretion standard. *State v. Spears*, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999). And this court gives considerable deference to a circuit court’s sentencing decision, understanding that the circuit court is in a better position to observe the defendant and the victim, and to consider the appropriate sentencing factors. *See State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984).

¶6 A sentence is unduly harsh if it 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). Lucas does not contend that the circuit court failed to consider or address the required sentencing criteria. He contends, however, that his sentences are harsh and excessive. This court disagrees.

¶7 Lucas was on probation at the time he committed these offenses. Further, and most importantly, he had *eighteen* prior convictions. According to the sentencing hearing, his prior offenses included at least one count (and in some instances, multiple counts) of: battery, battery by prisoner, burglary, criminal damage to property, criminal trespass to dwelling, disorderly conduct, escape, fleeing, operating a motor vehicle without owner's consent, violation of domestic abuse injunction, and resisting. These offenses, covering many years and resulting in periods of incarceration and probation, indicate that Lucas has been violent and incorrigible. At the sentencing hearing, he conceded that when he committed the three offenses in the instant case, he was "very angry ... and out of control."

¶8 Under the circumstances, the circuit court reasonably concluded that both Lucas' needs and the public's protection required lengthy incarceration. Clearly, at least an eight-year sentence was "right and proper." See *Ocanas*, 70 Wis. 2d at 185.

¶9 Lucas contends, however, that the circuit court's sentencing statement fell short. He maintains that the court failed to specifically explain why eight years, exactly, was appropriate, why each individual count merited the exact number of years ordered, and why concurrent sentences would not have been sufficient to serve the public's sentencing needs. This court has carefully considered the circuit court's sentencing statements. Although Lucas correctly notes that the court did not precisely delineate a count-by-count rationale, he fails to establish any resulting unfairness. Logically, just as the confluence of crimes such as these could have been the basis for concurrent sentences for a different defendant, such confluence makes it all the more difficult to delineate a meaningful count-by-count rationale.

¶10 Lucas next challenges the court's order for \$400 restitution to Alicia Johnson, one of the criminal-damage victims. Seeking a remand for a restitution hearing, he argues that the court failed to follow the procedure required under WIS. STAT. § 973.20(13)(c) and, therefore, improperly ordered restitution. Again, this court disagrees.

¶11 WISCONSIN STAT. § 973.20(13)(c) provides, in part: "If the defendant stipulates to the restitution claimed by the victim or if any restitution dispute can be fairly heard at the sentencing proceeding, the court shall determine the amount of restitution before imposing sentence or ordering probation." Here, while once again Lucas has correctly identified some imprecision in the circuit court proceeding, this court is satisfied that Lucas stipulated to restitution of *at least* \$200, and that any remaining restitution dispute with Johnson was "fairly heard" and determined "at the sentencing proceeding." *See id.*

¶12 At sentencing, the court learned that Lucas had damaged property of both Johnson and her landlord. The court also learned, however, that Lucas had repaired some of the damage to the residence. Lacking adequate information about the landlord's losses, the court did not order restitution to him.

¶13 The court did, however, learn additional details about Johnson's losses. Johnson stated that her clothing had been damaged "in the range of \$800," and that she had incurred costs to repair the residence of "about \$1200." She explained, "I had to pay for paint and getting things fixed around the house and replace the clothing and shoes that was [sic] damaged in this incident." She said her landlord "made me pay for all of the stuff that was damaged." She also explained: "I have receipts at home for damage of the doors. I had to pay for

every door to be replaced, and paint, supplies and dry wall. I didn't bring any receipts. I didn't think that I had to."

¶14 The court did not simply accept Johnson's account. Defense counsel advised the court that "the clothing was mostly [Lucas'] own, and \$800 seems an awful lot of clothing." Counsel added that Lucas "says about \$200 of [restitution for Johnson's] clothing is appropriate."

¶15 Additionally, Lucas conceded other costs, or at least the likelihood that more restitution might be appropriate. Defense counsel advised: "There are some other things that I think were probably damaged in the melee; ... when he damaged the wall, some things got knocked over. Besides the clothes, there were wine glasses. Things like that are discussed [in the police reports]." Lucas told the court: "My anger led me to punch a hole in the wall ... the wine glasses set [sic] up on a shelf. I didn't stop and lag around. Maybe they did fall. I'm not denying."

¶16 Thus, Johnson sought restitution of approximately \$2000, Lucas stipulated to restitution of at least \$200, and Lucas also acknowledged responsibility for some additional restitution for broken wine glasses or other property he concedes he may have damaged. The court ordered \$400. Lucas neither challenged Johnson's statements nor sought production of her receipts. And when the court determined that \$400 was fair, Lucas neither challenged that finding nor asked for an additional hearing. Under the circumstances, this court is satisfied that the circuit court fairly heard and determined the restitution Lucas owed Johnson.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)4.

