COURT OF APPEALS
DECISION
DATED AND FILED

August 31, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0302-CR **Cir. Ct. No. 03CM000335**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JIMMIE L. PERKINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN SIEFERT and RUSSELL W. STAMPER, Judges.[1] *Reversed and cause remanded with directions*.

¶1 CURLEY, J.[2] Jimmie Perkins appeals the judgment convicting him of entry into a locked vehicle, as a party to a crime, contrary to WIS. STAT.

[1] The Honorable John Siefert was the sentencing judge. The Honorable Russell W. Stamper denied the postconviction motion.

[2] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

§§ 943.11 and 939.05 (2001-02).[3] He argues that because the trial court failed to explain why it imposed the maximum sentence, the trial court erroneously exercised its discretion. The State agrees. This court also agrees and remands the case for resentencing.

I. BACKGROUND.

¶2 Perkins was originally charged with entry to a locked vehicle, as a party to a crime and as a habitual criminal. The charge emanated out of a traffic stop in the City of Glendale. While on routine patrol, the officer noticed a van without a rear license plate, and made a u-turn in order to stop the vehicle. While doing so, he noticed a stuffed blue duffel bag lying in a lane of traffic. Since the duffel bag was not there when he passed that spot seconds earlier, and the only vehicle to pass that particular part of the road was the van he was attempting to stop, he believed the bag had been tossed from the van. After stopping the van, the officer discovered that Perkins, the driver, did not have a driver's license. After taking Perkins into custody, the officer learned that the duffel bag had been taken from a nearby parked car after the passenger window had been smashed.

¶3 Perkins pled guilty and the State dismissed the habitual criminality penalty enhancer after advising the court that the State was unable to verify Perkins's prior convictions. At sentencing, it was indicated that Perkins had four cases pending, an open felony arrest warrant from another county, and was currently serving several other sentences. The State, pursuant to the plea negotiation, made no sentencing recommendation. Perkins's attorney

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

recommended probation. The trial court sentenced him to the maximum sentence of nine months, to be served consecutively to the other sentences, with no Huber privileges. Perkins brought a postconviction motion seeking resentencing. The motion was denied without a hearing. Perkins appeals. Although the State opposed the postconviction motion seeking resentencing, on appeal the State agrees that the trial court failed to exercise the proper discretion.

II. ANALYSIS.

¶4 Sentencing is well within the discretion of the trial court, ***State v. Larsen***, 141 Wis. 2d 412, 426, 415 N.W.2d 535 (Ct. App. 1987), and "[t]he trial court has great latitude in passing sentence[,]" ***State v. J.E.B.***, 161 Wis. 2d 655, 662, 469 N.W.2d 192 (Ct. App. 1991). Our review "is limited to determining whether there was an [erroneous exercise] of discretion." ***Larsen***, 141 Wis. 2d at 426 (citation omitted). "'[S]entencing decisions of the [trial] court are generally afforded a strong presumption of reasonability because the [trial] court is best suited to consider the relevant factors and demeanor of the convicted defendant.'" ***State v. Gallion***, 2004 WI 42, ¶18, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted).

¶5 However, "judges are to explain the reasons for the particular sentence they impose … and are required to provide a 'rational and explainable basis' for the sentence." ***Id.***, ¶39 (citation omitted). Further:

> [Trial] courts are required to specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.
>
> Courts are to identify the general objectives of greatest importance. These may vary from case to case. In some cases, punishment and protection of the community

> may be the dominant objectives. In others, rehabilitation of the defendant and victim restitution may be of greater import. Still others may have deterrence or a restorative justice approach as a primary objective.
>
> Courts are to describe the facts relevant to these objectives. Courts must explain, in light of the facts of the case, why the particular component parts of the sentence imposed advance the specified objectives.
>
> Courts must also identify the facts that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence the decision.

Id., ¶¶ 40-43 (citation and footnote omitted).[4] Thus, ***Gallion*** requires "that the court, by reference to the relevant facts and factors, explain how the sentence's component parts promote the sentencing objectives." ***Id.***, ¶46. Moreover, "the sentence imposed shall 'call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.'" ***Id.***, ¶44 (quoting ***McCleary v. State***, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971)).

¶6 The State and Perkins argue that the trial court's sentencing comments were woefully inadequate. This court agrees. Here, the trial court's comments explaining the sentence were quite brief. They consist of the following:

> Okay. I'm sorry, counsel, but I think that his criminal record is not good. The sentence he is serving speaks poorly of his character. The fact that I believe probable cause has been found in the felony at least to the point of issuing a criminal complaint.

[4] "Likewise, under truth-in-sentencing, the legislature has mandated that when a court makes a sentencing decision that the court shall consider the protection of the public, the gravity of the offense, the rehabilitative needs of the defendant, and any applicable mitigating or aggravating factors…." ***State v. Gallion***, 2004 WI 42, ¶40 n.10, 270 Wis. 2d 535, 678 N.W.2d 197.

> I am going to impose a sentence here of 9 months in the House of Correction, consecutive, straight time, no credit for pretrial incarceration. The court objects to electronic surveillance.

¶7 The court never mentioned the gravity of Perkins's offense or the need to protect the public. In fact, the only factor mentioned by the trial court was Perkins's character, and the trial court did so in a cursory fashion, commenting on Perkins's criminal record and the fact that he was charged with a felony in another county. The trial court gave no meaningful explanation for any sentence and certainly did not explain why he gave Perkins the maximum sentence, to be served consecutively to his other sentences. The failure to address the relevant factors and explain the rationale for the court's sentence is an erroneous exercise of discretion. For the reasons stated, this matter is remanded for resentencing.

By the Court.—Judgment and order reversed and cause remanded with directions.

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