

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 19, 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. 04-0442-CR
04-0443-CR
STATE OF WISCONSIN**

**Cir. Ct. No. 02CF000676
02CF001044**

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TYREE GOODRICH,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Brown County: MARK A. WARPINSKI, Judge. *Modified and, as modified, affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Tyree Goodrich appeals judgments, entered upon his no contest pleas, convicting him of battery and disorderly conduct, both counts as a repeater, and burglary to a building or dwelling. He also appeals the order denying his postconviction motion for relief. Goodrich argues that the circuit

court erroneously exercised its sentencing discretion. We reject his arguments and affirm the judgments and order.

¶2 In Brown County Circuit Court case no. 02-CF-676, the State charged Goodrich with burglary to a building or a dwelling. In Brown County Circuit Court case no. 02-CF-1044, Goodrich was charged with one count each of battery, disorderly conduct and felony bail jumping, all three counts as a repeater. The felony bail jumping charge was later dismissed. In exchange for his no contest pleas, the State agreed to join in defense counsel's recommendation for twelve months' jail time on the burglary charge and concurrent three-year sentences on the battery and disorderly conduct charges. Following his convictions, the circuit court sentenced Goodrich to eight years' imprisonment on the burglary charge, consisting of five years' initial confinement followed by three years' extended supervision. That sentence was then stayed and Goodrich was placed on eight years' probation. Consistent with the joint recommendation, the court imposed concurrent three-year sentences on the disorderly conduct and battery convictions.¹ The court denied Goodrich's motion for postconviction relief and this appeal follows.

¶3 Goodrich argues that the circuit court erroneously exercised its discretion by placing too much emphasis on his prior criminal record and failing to adequately consider that he was cooperative with authorities when arrested and cooperative by withdrawing his suppression motion and entering no contest pleas. Goodrich also contends the circuit court did not fully consider the joint sentence

¹ It appears that Goodrich is not challenging the sentences imposed on the battery and disorderly conduct convictions. In any event, where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. *State v. Scherrieks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

recommendation. We are not persuaded. Sentencing lies within the discretion of the circuit court. *State v. Echols*, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). In reviewing a sentence, this court is limited to determining whether there was an erroneous exercise of discretion. *See id.* There is a strong public policy against interfering with the sentencing discretion of the circuit court, and sentences are afforded the presumption that the circuit court acted reasonably. *Id.* at 681-82.

¶4 If the record contains evidence that the circuit court properly exercised its discretion, we must affirm. *See State v. Cooper*, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983). Proper sentencing discretion is demonstrated if the record shows that the court “examined the facts and stated its reasons for the sentence imposed, ‘using a demonstrated rational process.’” *State v. Spears*, 147 Wis. 2d 429, 447, 433 N.W.2d 595 (Ct. App. 1988). “To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record.” *Cooper*, 117 Wis. 2d at 40.

¶5 The three primary factors that a sentencing court must address are: (1) the gravity of the offense; (2) the character and rehabilitative needs of the offender; and (3) the need for protection of the public. *State v. Sarabia*, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984). The weight to be given each of the primary factors is within the discretion of the sentencing court, and the sentence may be based on any or all of the three primary factors after all relevant factors have been considered. *See State v. Wickstrom*, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984).

¶6 Here, the court considered the appropriate factors in imposing sentence and was not obligated to follow the sentencing recommendations. *See State v. Bizzle*, 222 Wis. 2d 100, 105-06 n.2, 585 N.W.2d 899 (Ct. App. 1998).

The court considered the gravity of the offenses and the need for protection of the public. With respect to Goodrich's character, the court took into consideration the fact that Goodrich entered pleas to the offenses and also considered other mitigating factors, such as Goodrich's education. The court expressed concern, however, that despite his pleas, Goodrich exhibited an unwillingness to accept responsibility for his actions after the burglary.

¶7 The court also observed that Goodrich had a pattern of drinking and committing crimes, being incarcerated, and then after being released, again engaging in excessive drinking and re-offending. The court noted that this was Goodrich's fourth burglary conviction and that he seemed to last no more than two years out of prison before committing more crimes. The court, in fact, noted that Goodrich committed the present burglary while he was awaiting sentence on the battery and disorderly conduct charges. In an attempt to break this pattern, the court imposed and stayed a lengthy sentence to encourage Goodrich to complete the eight-year probation period successfully. Because the court considered the relevant factors and gave extensive reasons for the sentence imposed, we conclude that it properly exercised its sentencing discretion.

¶8 We note that the judgment of conviction in Outagamie County Circuit Court case no. 02-CF-1044 indicates that Goodrich entered "Not Guilty" pleas to the battery and disorderly conduct charges. Both the Plea Questionnaire and Waiver of Rights Form, as well as the plea hearing transcript confirm that Goodrich entered no contest pleas to the crimes charged. Because this appears to be a clerical error, upon remittitur, the court shall enter an amended judgment of conviction correctly identifying Goodrich's pleas as "No Contest." Therefore, the judgment in 02-CF-1044 is modified and, as modified, affirmed. The judgment in

case no. 02-CF-676 and subsequent postconviction order are affirmed without modification.

By the Court.—Judgment and order affirmed; judgment modified and, as modified, affirmed.

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

