

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 20, 2011**

A. John Voelker  
Acting 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. 2010AP1995-CR**

**Cir. Ct. No. 2008CF145**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LISA L. PAYNE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Oconto County: MICHAEL T. JUDGE, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 HOOVER, P.J. Lisa Payne appeals a judgment, entered upon her no contest plea, convicting her of identity theft, as party to a crime. Payne also appeals the order denying her postconviction motion for resentencing. Payne contends the circuit court “went beyond” the appropriate sentencing factors when

it considered whether her medical needs would be better served in jail or prison. Because the court properly exercised its sentencing discretion, we reject this argument and affirm the judgment and order.

### BACKGROUND

¶2 An Information charged Payne with party to the crime of identity theft. In exchange for her no contest plea to the crime charged, the State agreed to dismiss and read in an identical charge arising from Brown County. Out of a maximum possible six-year sentence, the court imposed a sentence of three years and one month, consisting of one year and one month of initial confinement followed by two years of extended supervision, to run concurrently with the sentence for a bail jumping conviction imposed in another Oconto County case. Payne's postconviction motion for resentencing was denied and this appeal follows.

### DISCUSSION

¶3 Payne argues the circuit court erroneously exercised its sentencing discretion. In reviewing a sentence, this court is limited to determining whether there was an erroneous exercise of discretion. *See State v. Echols*, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). There is a strong public policy against interfering with the circuit court's sentencing discretion, and sentences are afforded the presumption that the circuit court acted reasonably. *See id.* at 681-82. 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) (citation omitted). "To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in

the record.” *State v. Cooper*, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983).

¶4 The sentence imposed should be the minimum amount of confinement that is consistent with three primary sentencing factors: (1) the gravity of the offense; (2) the character of the defendant; and (3) the need to protect the public. See *State v. Gallion*, 2004 WI 42, ¶¶23, 59-61, 270 Wis. 2d 535, 678 N.W.2d 197. 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). When imposing sentence, the court must “by reference to the relevant facts and factors, explain how the sentence’s component parts promote the sentencing objectives.” *Gallion*, 270 Wis. 2d 535, ¶46. Sentencing objectives “include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, ¶40. Although the court should explain the reasons for the particular sentence imposed, “[h]ow much explanation is necessary ... will vary from case to case.” *Id.*, ¶39.

¶5 Claiming that her physical condition bears no “reasonable nexus to any proper sentencing factor,” Payne argues the circuit court improperly considered her medical needs when it sentenced her to prison rather than jail. At sentencing, the court acknowledged the broad range of sentence recommendations it received. The parties jointly recommended that the court withhold sentence and impose three years’ probation with sixty days of jail time as a condition. In turn, the presentence investigation report recommended a four-year sentence, consisting of two years’ initial confinement and two years’ extended supervision. Before imposing the three-year and one-month sentence, the court considered the

seriousness of the offense, noting the substantial impact Payne's conduct had on her victims. The court also considered the need to protect the public; Payne's character, including her prior offenses; and its desire to deter others from similar fraudulent conduct. The court then added: "I also have to take into effect that I am well aware of the doctors' appointments, the prescriptions, the physical therapy and probably other things that have to be addressed on your behalf, and I don't know if that can be addressed adequately in a county jail."

¶6 In her postconviction motion for resentencing, Payne argued that her medical needs were an inappropriate sentencing factor. At the postconviction motion hearing, however, the court clarified that the length of Payne's sentence was not dependent upon the care that she would receive in either jail or prison. Rather, the court tried to "equate the length of the sentence with the offense after weighing the objectives and factors enumerated" at the sentencing hearing. The court further noted:

I did not sentence her to prison because I thought that that is the best place that her needs could be met. I sent her to prison because I thought she should serve approximately one year of time in confinement, be it in the county jail or in prison, and that if she was going to serve that amount of time, her emotional and physical needs could best be met in the setting of the Wisconsin State Prison.

¶7 Based on this record, we conclude the court properly exercised its sentencing discretion. Having determined that a year of confinement was necessary to achieve the sentencing objectives identified, the court then determined that confinement in a state prison was more appropriate than confinement in a county jail. It was in this regard only that the court took into account the limitations of a county jail in meeting Payne's medical needs. This was a sensible consideration of Payne's particular circumstances in the greater

context of a sentence designed to satisfy the interests of both the public and the defendant. It was entirely proper for the court to give Payne's medical needs the limited consideration they received.

*By the Court.*—Judgment and order affirmed.

Not recommended for publication in the official reports.

