

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 7, 2012

Diane M. Fremgen
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. 2011AP900-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2009CF418

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDUARDO ARANDA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly, J. and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. In this appeal from a judgment convicting him of two counts of delivering cocaine on his guilty pleas and an order denying his postconviction motion seeking sentence modification, Eduardo Aranda challenges

his sentence. We affirm because the circuit court did not misuse its sentencing discretion.

¶2 At sentencing, the circuit court discussed Aranda's character and personal history, his drug use and how he dealt drugs to make money, the absence of a presentence investigation report, Aranda's role in the international and local illegal drug supply chain, the severity of the offenses of conviction and the five other drug offense counts that were dismissed but read in, Aranda's culpability, public safety and the need for deterrence, and Aranda's rehabilitation needs. The court placed the greatest weight on the seriousness of the offenses and found that placing Aranda on probation would unduly depreciate the seriousness of those offenses. The court sentenced Aranda to two concurrent twelve-year terms (seven years of initial confinement and five years of extended supervision.) The maximum possible sentence was twelve and one-half years.

¶3 Postconviction, Aranda sought sentence modification because the circuit court did not consider Aranda's arguments at sentencing, did not consider the sentencing factors and did not sufficiently explain the length of the sentence. The circuit court denied the postconviction motion after concluding that it properly exercised its sentencing discretion.

¶4 In fashioning the sentence, a circuit court must consider various sentencing objectives and factors.¹ *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentencing objectives include protecting the community, punishing and rehabilitating the defendant, and deterring others. *Id.* The primary sentencing factors are the gravity of the offense, the defendant’s character and the need to protect the public. *Id.* The discretion of the sentencing judge must “be exercised on a ‘rational and explainable basis.’” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The weight to be given the various factors is within the circuit court’s discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). As long as the sentencing court “considered the proper factors and the sentence was within the statutory limitations, the sentence will not be reversed unless it is so excessive as to shock the public conscience.” *State v. Owen*, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996).

¶5 On appeal, Aranda essentially argues that the circuit court did not see the case the way he saw it, and the court should have balanced the sentencing factors differently and more in Aranda’s favor. We reject all of Aranda’s specific arguments that the court should have placed greater weight on other factors or given greater weight to what Aranda characterizes as mitigating factors. These arguments

¹ These factors “include, but are not limited to: 1. the defendant’s past criminal record, 2. the defendant’s history of undesirable behavior pattern, 3. the defendant’s personality, character and social traits, 4. the presentence investigation report, 5. the vicious or aggravated nature of the crime, 6. the degree of the defendant’s culpability, 7. the defendant’s demeanor before the court, 8. the defendant’s age, educational background and employment record, 9. the defendant’s remorse, repentance and cooperativeness, 10. the defendant’s need for close rehabilitative control, 11. the rights of the public, and 12. the length of pretrial detention.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.

ignore the applicable law, particularly the law that holds that the weight of sentencing factors is for the circuit court. *Cunningham*, 76 Wis. 2d at 282.

¶6 As discussed above, the court considered a variety of sentencing objectives and factors and placed weight on those factors in its discretion. Aranda had a history of drug offenses as demonstrated by his guilty pleas to two charges and the five drug charges that were dismissed but read in. Aranda admitted that he sold drugs to fifteen different people. The court did not punish Aranda for his drug addiction; it punished him for selling illegal drugs, regardless of his motivation to do so.

¶7 Aranda argues that the circuit court did not explain why it sentenced him to seven years' initial confinement rather than the five years suggested by the State or how it determined how much extended supervision was warranted. A defendant is not entitled to a mathematical breakdown of how each sentencing factor translates into a specific number of years in the sentence. *State v. Fisher*, 2005 WI App 175, ¶¶21-22, 285 Wis. 2d 433, 702 N.W.2d 56. The sentence was within statutory limitations and it is not so excessive as to shock the public conscience. *Owen*, 202 Wis. 2d at 645.

¶8 Because the circuit court properly exercised its sentencing discretion, Aranda is not entitled to relief from his sentence

By the Court.—Judgment and order affirmed.

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

