

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

December 26, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-1687-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**WILLIE J. DOBSON,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DIANE S. SYKES, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Willie J. Dobson appeals from a judgment of conviction for armed robbery, party-to-the-crime, and fleeing a law enforcement officer. See §§ 943.32(1)(b) & (2), 939.05, 346.04(3), and 346.17(3), STATS. Dobson also appeals from an order denying his postconviction motion seeking resentencing. Dobson claims that the trial court erroneously exercised its discretion in sentencing him. Dobson also claims that due process and

§ 971.04(1)(g), STATS., required him to be present in court when the trial court made its “resentencing” decision. We affirm.

Dobson was charged with one count of armed robbery, party-to-the-crime, and one count of fleeing a law enforcement officer. Following a jury trial, Dobson was found guilty of both crimes. The trial court ordered a presentence investigation report. Subsequently, the trial court sentenced Dobson to twenty-one years in prison. At the sentencing hearing, the trial court stated: “He [the victim] was seriously injured in connection with this armed robbery, struck a number of times and sustained some substantial injuries ....” Following the sentencing hearing, Dobson sought postconviction relief and a resentencing hearing. He argued that the trial court misstated the evidence regarding how many times the victim was struck. According to the victim's testimony, he was struck one time, not numerous times. The fact that the victim was struck only once was acknowledged by the trial court in its decision and order denying the motion for postconviction relief: “Although I stated at sentencing that the victim had been struck ‘a number of times,’ my misstatement does not constitute grounds for resentencing.”

First, Dobson argues that he is entitled to be resentenced because the trial court relied on erroneous information when it exercised its discretion in sentencing him. Our standard when reviewing a criminal sentence is whether or not the trial court erroneously exercised discretion. *State v. Wagner*, 191 Wis.2d 322, 332, 528 N.W.2d 85, 89 (Ct. App. 1995). There is a strong policy against an appellate court interfering with a trial court's sentencing determination and, indeed, an appellate court must presume that the trial court acted reasonably. *State v. Thompson*, 146 Wis.2d 554, 564, 431 N.W.2d 716, 720 (Ct. App. 1988).

The sentencing court must consider three primary factors: (1) the gravity of the offense; (2) the character of the offender; and (3) the need to protect the public. *Wagner*, 191 Wis.2d at 333, 528 N.W.2d at 89. The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character, and social traits; the presentence investigation results; the aggravated or vicious nature of the defendant's crime; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background, and employment record; the defendant's remorse,

repentance, or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the needs and rights of the public; and the length of the defendant's pretrial detention. See *State v. Jones*, 151 Wis.2d 488, 495-496, 444 N.W.2d 760, 763-764 (Ct. App. 1989). The weight to be given each factor is within the trial court's discretion. *Wagner*, 191 Wis.2d at 333, 528 N.W.2d at 89.

Although it is clear from the record that the trial court mistakenly noted that the victim had been struck "a number of times," there were overwhelming reasons to impose the sentence received by Dobson. In sentencing Dobson, the trial court noted his prior criminal history and the fact that he engaged in violent behavior during each of the prior offenses. The trial court also considered the serious physical and psychological injury Dobson's conduct caused his victim, for which Dobson never showed remorse. The trial court also considered the presentence report which revealed that Dobson had received numerous conduct reports while in prison for past offenses. The trial court also concluded that Dobson represented a substantial risk to the community. Our review of the record indicates that the trial court considered the appropriate sentencing factors for the sentence it imposed.

We also reject Dobson's alternative argument that the trial court's misstatement constitutes a "new factor" necessitating resentencing. A "new factor" refers to a fact "highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all the parties." *State v. Macemon*, 113 Wis.2d 662, 668, 335 N.W.2d 402, 406 (1983) (citation omitted). Here, the trial court specifically noted that the misstatement was not a material factor in its sentencing decision.

Dobson also argues that it was improper for the trial court to exclude him from the "resentencing hearing." Dobson, however, was not excluded from the hearing because a resentencing hearing was not held in this case. The trial court denied Dobson's request for resentencing in its postconviction order dated March 9, 1995.

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

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