

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 13, 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 Nos. 2011AP633-CR
2011AP634-CR**

**Cir. Ct. Nos. 2009CF4889
2009CF4949**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DEMETRICE R. WRIGHT,

DEFENDANT-APPELLANT.

APPEAL from judgments and orders of the circuit court for Milwaukee County: PATRICIA D. McMAHON and REBECCA F. DALLET, Judges. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Demetrice R. Wright appeals from judgments of conviction, entered upon his guilty pleas, on one count of second-degree recklessly endangering safety and two counts of possession of a firearm by a felon.

Wright also appeals from portions of orders denying his postconviction motion for sentence modification.¹ Wright complains that his “lengthy and consecutive” sentences constitute an erroneous exercise of the sentencing court’s discretion. We disagree and affirm the judgments and orders.²

¶2 In September 2009, while on extended supervision for a prior felony conviction, Wright had an altercation with his sometimes-girlfriend, Shree Bennett, firing a pistol at her at least eight times. This incident happened to be near a school. For this, Wright was charged with second-degree recklessly endangering safety with use of a dangerous weapon in a school zone, possession of a firearm by a felon, and discharging a firearm in a school zone.

¶3 In October 2009, Wright was at a gas station with both his cousin and a friend, Steve Johnson. Johnson shot and killed an individual at the gas station. Johnson was evidently shot as well, which caused him to drop his gun. Wright told police that he picked up the gun and gave it back to Johnson, then helped his cousin drag Johnson back to their car before driving off. This led to a new case in which Wright was charged with possession of a firearm by a felon.

¶4 Wright’s extended supervision was revoked because of both incidents. He was sentenced to two years, five months, and nine days of reconfinement.

¹ Wright’s postconviction motion sought resentencing in both cases and requested that the \$250 DNA surcharge be vacated. The circuit court granted the request to vacate the DNA surcharge; thus, Wright is actually appealing only the portions of the orders that denied resentencing.

² The Honorable Patricia D. McMahon imposed sentence and entered the judgments of conviction. The Honorable Rebecca F. Dallet denied the postconviction motion and entered the corresponding orders.

¶5 Pursuant to a plea bargain, in exchange for guilty pleas to second-degree recklessly endangering safety and the two possession counts, the State agreed to dismiss the enhancers attached to the endangering charge and to dismiss and read in the discharge-in-a-school-zone count. The State also agreed to make a global sentencing recommendation of five years' initial confinement and five years' extended supervision while standing silent on whether that sentence should be concurrent or consecutive to the revocation sentence.

¶6 At sentencing, the State made the recommendation called for in the plea bargain. Wright affirmatively joined the sentence recommendation, though he asked that his sentences be concurrent. The circuit court sentenced Wright to five years' initial confinement and five years' extended supervision for both the endangering safety charge and for the first possession charge. These sentences were concurrent to each other and consecutive to the revocation sentence. For the second possession charge, the circuit court sentenced Wright to an additional, consecutive two years' initial confinement and two years' extended supervision.

¶7 Wright sought resentencing, complaining his sentence was unduly harsh. He also contended that the circuit court erroneously exercised its discretion when it allowed the mother of Johnson's homicide victim to speak, because she was not a "victim" of any of Wright's crimes as defined by statute. The circuit court rejected Wright's arguments and denied the motion. Wright appeals.

¶8 Sentencing is committed to the circuit court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. A defendant challenging a sentence has a burden to show an unreasonable or unjustifiable basis in the Record for the sentence at issue. *See State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912, 925 (1998). We start with a presumption

that the circuit court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See id.* at 418–419, 576 N.W.2d at 925.

¶9 In its exercise of discretion, the circuit court is to identify the objectives of its sentence, including but not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. *Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. In determining the sentencing objectives, we expect the circuit court to consider a variety of factors, including the “gravity of the offense, the character of the defendant, and the need to protect the public.” *See State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 698–699, 786 N.W.2d 409, 415. The weight assigned to the various factors is left to the circuit court’s discretion. *Id.*, 326 Wis. 2d at 669, 786 N.W.2d at 415. The amount of necessary explanation of a sentence varies from case to case. *Gallion*, 2004 WI 42, ¶39, 270 Wis. 2d at 556, 678 N.W.2d at 207.

¶10 On appeal, Wright first repeats the argument he made in the circuit court: the global sentence, which was consecutive to his revocation sentence and which exceeded the parties’ recommendation, was unduly harsh and, thus, an erroneous exercise of the circuit court’s discretion. He complains that the circuit court put too much focus on punishment and not enough on his rehabilitative needs. He complains that he should have received more credit for accepting responsibility, for his remorsefulness, and for his desire to change his ways.

¶11 The circuit court explained that the recklessly endangering safety charge was an extremely serious offense.³ Wright had fired a gun eight times near

³ The circuit court’s comments regarding the second felon-in-possession charge will be discussed below.

a school where the children and teachers were outside, just because he was mad and having an argument with someone. There were multiple aggravating factors: the loaded weapon, the recklessness, the proximity to the school, and the fact that Wright was on extended supervision at the time. Further, Wright had a terrible, violent prior record and a terrible record on extended supervision, including periods of absconding.

¶12 The circuit court believed that Wright had little appreciation for the risk he presented to the community, particularly given that he continued to reoffend and seemed incapable of controlling himself. The circuit court also admonished Wright that it could not ignore his conduct: he would be judged by the things he had done, not the things he promised to do. The circuit court concluded that a punishment aspect to the sentence was appropriate, and that because of Wright's risk, he would need to spend time in prison.

¶13 It is irrelevant that the sentence exceeded the parties' recommendations. It is well known that the circuit court is not bound by the parties' sentencing recommendations. Indeed, such an admonition is required in the plea colloquy. See *State v. Hampton*, 2004 WI 107, ¶20, 274 Wis. 2d 379, 390, 683 N.W.2d 14, 19.

¶14 Further, the maximum possible sentence Wright could have received was thirty years' imprisonment. The sentence totaling fourteen years' imprisonment is well within the range authorized by law and therefore is presumptively neither harsh nor unconscionable. See *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 108–109, 622 N.W.2d 449, 456. That Wright believes the weight given to the sentencing factors should have been allocated

differently or the sentencing objectives prioritized differently does not mean the circuit court erroneously excised its discretion.

¶15 Wright also complains that the circuit court sentenced him on inaccurate information. As noted, the homicide victim’s mother was allowed to speak. Near the end of its sentencing comments, the circuit court stated, “And then we have the impact of being involved in a serious offense in October that resulted in the death of [that victim]. And you’re not here for causing that death, but you’re here for your responsibility as part of that.” Based on this, Wright contends that he was sentenced for “causing of the death of the homicide.”

¶16 “A defendant has a constitutionally protected due process right to be sentenced upon accurate information.” *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 185, 717 N.W.2d 1, 3. “Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews de novo.” *Ibid.* A defendant who seeks resentencing because of the circuit court’s use of inaccurate information must show that the information was inaccurate and that the circuit court actually relied upon the inaccurate information in the sentencing. *Id.*, 2006 WI 6, ¶26, 291 Wis. 2d at 192–193, 717 N.W.2d at 7.

¶17 In rejecting Wright’s postconviction motion, the circuit court ruled that there was “no question that [the sentencing court] did not place any reliance” on the victim’s mother’s statement in imposing sentencing. We agree. Moreover, when we view the entirety of the circuit court’s sentencing comments, we are not persuaded that any inaccurate information was present.

¶18 At sentencing, the circuit court acknowledged that Wright “is only charged with felon in possession of a firearm in that incident and not with being the one who shot” the victim. As a result, the circuit court stated that it would

only allow the mother to speak “very briefly.” Indeed, the mother offered a mere three sentences at the hearing.⁴

¶19 In imposing sentence with regard to the second possession charge, the circuit court explained:

And what’s aggravating about -- aggravated about this, your involvement, is you were involved. You knew there was a shooting. You helped the shooter leave the scene and failed to stay and talk to the police and be straightforward as to your involvement.

But, in any event, you did possess a firearm. And, once again, the aggravated factors of being on extended supervision, having a loaded firearm in the context of an argument...

And I guess I look at something that was said, that you were glad no one got shot or hurt in the incident, the first incident. And yet here you are, days later, involved in another incident with firearms being used to address arguments of whatever nature.

¶20 Thus, when the circuit court later stated Wright was being sentenced for his “responsibility as part of” the homicide, it was fully aware that Wright did not cause the death. Rather, it was Wright’s actions after the fact—possessing the firearm, assisting the shooter, and not staying to speak to police—juxtaposed with his bad choices from the month before for which the circuit court was sentencing him. The Record reveals that there was no inaccurate information actually relied upon by the sentencing court and, thus, no basis for resentencing.

⁴ “I wish to say, ma’am, that Mr. Wright was given a second chance. [My son] can’t have a second chance. And I think five years is a slap on the wrist for my son’s life, because he was there shooting as well as other people.” It is not clear why the mother referenced Wright shooting other people in the context of her son’s homicide, but it is evident that the circuit court placed no emphasis on that comment.

By the Court.—Judgments and orders affirmed.

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

