

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 15, 1996

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, 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. 94-3362-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SCOTT R. SCHOENEBERG,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Columbia County: LEWIS W. CHARLES, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Scott R. Schoeneberg appeals from a judgment convicting him on four felony counts, and from an order denying his motion for postconviction relief. The issue is whether the trial court properly exercised its sentencing discretion. We affirm.

Schoeneberg confessed to starting or attempting to start ten arson fires in and around the Portage area between November 1992 and August 1993. His targets were businesses, residential buildings, two barns on his great-uncle's farm, and, in one instance, a car. The damage from his arsons totaled \$377,000. At least one person was placed in serious jeopardy, and some livestock were killed. The loss of the two barns effectively put his great-uncle out of the dairy farming business.

Schoeneberg pleaded no contest to four arson counts. In exchange for the plea, the State dismissed the six remaining counts, subject to a read-in, and agreed to recommend a total prison sentence not exceeding thirty years.

At sentencing, the State argued for concurrent twenty-year terms on two of the arsons, and concurrent ten-year terms on the two others, consecutive to the twenty-year terms. Schoeneberg asked for two ten-year concurrent prison terms, followed by two concurrent ten-year probation terms. The trial court accepted the State's recommendation as necessary to protect the public and to avoid unduly depreciating the severity of the offenses.¹

¹ The trial court's comments at the sentencing hearing included the following:

Another factor is the rights of the public in general. Again, pure and simple protection. The defendant must simply be taken out of society.

....

... [Rehabilitation-counseling] ... is not the primary consideration of this Court in this case. If I would focus on that, I would be sending the wrong message. I would be sending a message that someone who sets fires has emotional and psychological problems; nothing more; nothing less. That's the wrong message.

The message is accountability. Quite frankly, the message is punishment.

A long period of time under supervision, whether it be a structured sentence or structured setting, or a supervised setting

Citing *McCleary v. State*, 49 Wis.2d 263, 276, 182 N.W.2d 512, 519 (1971), Schoeneberg contends that the trial court was obligated, at the sentencing hearing, to explain why the sentence was the minimum consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant. He contends that the court erroneously exercised its discretion by failing to provide this explanation, and also by failing to consider on the record various mitigating circumstances such as Schoeneberg's attitude, demeanor and remorsefulness. He also contends that even had the court properly explained its decision, the end result was an excessive sentence.

The trial court is not obligated to explain why the sentence imposed was the minimum one appropriate for the crimes. Although in *McCleary*, the supreme court approved of that practice, it did not make such an explanation mandatory. Nor is there any other authority for the proposition that a minimally necessary sentence is the only appropriate one. The test of sentencing is one of reasonableness. *State v. J.E.B.*, 161 Wis.2d 655, 661, 469 N.W.2d 192, 195 (Ct. App. 1991), *cert. denied*, 503 U.S. 940 (1992).

The trial court did not improperly discount Schoeneberg's expressions of sorrow and remorse. The court must consider three primary factors: the gravity of the offense, the character of the offender and the need to protect the public. *Id.* at 662, 469 N.W.2d at 195. However, the weight to be given each factor is a determination particularly within the wide discretion of the trial court. *Id.* Here, the court chose to concentrate on the seriousness of Schoeneberg's crimes and the need to protect the public from him. Given the facts of the offenses, the court's choice was reasonable.

Schoeneberg did not receive an excessive sentence. In sentencing Schoeneberg, the trial court considered the extensive damage Schoeneberg caused, the emotional and economic affect on his victims, the impact on the community of his ten-month arson spree, and the need to protect the public from further arsons. Schoeneberg faced potential prison terms totaling eighty years. Given the aggravated nature of his crimes, the sentences he received satisfy the test of reasonableness.

(.continued)

outside the state prison system is the goal. It has to be lengthy.

By the Court. – Judgment and order affirmed.

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