COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 17, 1995

No. 95-0490-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JASON D. SCHULTZ,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: ERIC WAHL, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Jason Schultz appeals a judgment of conviction and an order denying his postconviction motion arising out his plea of guilty to the charge of forgery, § 943.38(1), STATS., as an habitual criminal. Section 939.62, STATS. He argues that the trial court erroneously exercised its sentencing discretion because it (1) applied a preconceived sentencing policy; (2) improperly considered a victim impact statement; and (3) failed to grant sufficient time to review the presentence report. We reject his contentions and affirm the judgment and order.

Pursuant to a plea agreement, Schultz entered a plea to forgery. The presentence report, prepared January 26, 1994, recommended a four- to five-year prison sentence. Sentencing was set for February 15, 1994. At defense counsel's request, sentencing was adjourned to February 16, 1994, at which time the trial court sentenced Schultz to seven years in prison and ordered restitution. Schultz moved to modify his sentence. The trial court partially modified the sentence with respect to restitution but did not modify the seven-year prison term.

Sentencing is addressed to trial court discretion, and our review is limited to whether the trial court properly exercised its discretion. ***State v. Larsen,*** 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). An appellate court will search the record to determine whether the record supports the trial court's exercise of discretion. ***State v. Martin,*** 100 Wis.2d 326, 328, 302 N.W.2d 58, 59 (Ct. App. 1981). A mechanistic approach to sentencing is not an exercise of sentencing discretion. ***Id.*** at 327, 302 N.W.2d at 59. A preconceived policy tailored to fit the crime and not the offender is impermissibly closed to individual mitigating factors and therefore requires re-sentencing. ***Id.***

Schultz argues that the trial court erroneously exercised its discretion because it applied a preconceived sentencing policy. The record fails to support his contention. When the trial court denied defense counsel's second request for a continuance to investigate the sentencing option of intensive sanctions, it made the following statements that Schultz contends demonstrate a preconceived sentencing policy:

> I would not be inclined to recommend or accept a recommendation of Intensive Sanctions sentence in this case anyway. So I don't see that we gain anything by a delay. ...
>
> ....
>
> I wouldn't consider that to be a reasonable sentence in this case.
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> ....
>
> Even if Mr. Schultz was eligible, I would not accept that as a reasonable recommendation in this case.

Schultz fails to include the balance of the court's statements that explained its reasoning. The court continued:

> The point is that I think Mr. Schultz has had a lot of opportunities and he has not taken advantage of them. And it is a difficult--there is no job more difficult in my limited experience as a judge than sentencing someone and, particularly, a young man. [T]his fellow could have had promise. ... I am not going to extend Mr. Schultz another courtesy. ... Mr. Schultz has not shown any attempt to accept any of the courtesies going back to when he was a juvenile. And it's time for him to suffer some of the consequences.
>
> [W]e can take a week and you can come up with programs and alternatives and I'm not going to accept them. Based on my understanding of the presentence--now if you tell me the presentence is wrong ... the facts in it are incorrect, then certainly I'd have to consider that.

The trial court's remarks do not indicate a preconceived sentencing policy. To the contrary, the trial court considered Schultz's individual circumstances. It explicitly recognized the great difficulty in sentencing a young man with promise. Based upon the record and presentence report, the trial court was familiar with Schultz's background. Based upon Schultz's record, which included two burglaries, the trial court indicated that intensive sanctions was not a sound alternative. The record discloses a reasonable exercise of discretion.

Next, Schultz argues that the trial court erroneously considered the victim impact statement because the statement was irrelevant to the sentence. We disagree. Section 972.14(3), STATS., provides in part:

> (a) Before pronouncing sentence in a felony case, the court shall also allow a victim ... to make a statement or submit a written statement to be read in court. The court may allow any other person to make or submit a statement under this paragraph. Any statement

> under this paragraph must be relevant to the sentence.

Two relevant factors to be considered at sentencing are the character of the defendant and the protection of the public. ***State v. Sarabia,*** 118 Wis.2d 655, 673, 348 N.W.2d 527, 537 (1984). Here, the criminal complaint recites that the victims, Jean and Robert Barganz, had credit cards and a check stolen. Schultz pled to the one count of forgery as a result of forging both victims' names on the back of the stolen check. The record shows that a misdemeanor theft arising out of the use of a stolen credit card was pending in Dunn County at the time of sentencing on the forgery.

At sentencing on the forgery, the trial court considered the victim's impact statement, which detailed the embarrassment and inconvenience she suffered when she was attempting to use her credit card when shopping. The clerk would not let her have her new credit card back because the old one was reported stolen. Other people were waiting in line at the time this incident occurred. It took an hour and a half to straighten the problem out.

Schultz fails to understand how the victims' circumstances relate to his sentence. They are relevant because the credit card and check theft were part of the transaction leading to the forgery. Schultz apparently denies participation in the theft of the credit card. Nonetheless, the court was entitled to consider the impact of the credit card theft. Schultz's participation in the forgery reflects his character, specifically his lack of concern for the property rights of others.

Character is an appropriate sentencing factor. A court may evaluate character in light of participation in unproven offenses. ***State v. McQuay***, 154 Wis.2d 116, 126, 452 N.W.2d 377, 381 (1990). The trial court stated: "People deserve to feel safe in their own homes and with their own possessions." The victim impact statement revealed the extent of inconvenience and embarrassment that victims suffer as a result of theft of their property. The trial court properly considered the victim impact statement.

Next, Schultz argues that the trial court erred because it allowed him only nineteen minutes to review the presentence report.[1] Schultz fails to identify how the brief time span prejudiced him. *See* § 805.18, STATS. He had ten months from the time of sentencing to the postconviction hearing to read the presentence carefully and point out what he would have done or said differently at sentencing if he had been given more time. However, he did not do so at postconviction proceedings and has not done so in his appeal brief. Consequently, he fails to demonstrate grounds for resentencing.

By the Court. – Judgment and order affirmed.

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

[1] Schulz believes that he was allowed just 15 minutes; the clerk's notes indicate that he was allowed 19 minutes.