

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 2, 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, 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. 95-1253-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KRISTEN K. GAMER,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Dane County: JACK F. AULIK, Judge. *Reversed and cause remanded with directions.*

SUNDBY, J. Defendant, Kristen K. Gamer, appeals from a judgment convicting her of attempted possession of cocaine, and an order entered April 17, 1995, denying her motion for modification of sentence. However, she asks only that we¹ remand this matter to the trial court for re-

¹ This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS. "We" and "our" refer to the court.

sentencing. We conclude that the trial court did not make an adequate record of its sentencing discretion and remand for it to do so.

The trial court explained its reasons for the sentence as follows:

Having heard the testimony in this case, it frankly makes it much easier for the Court to impose sentence

... I think there was a wealth of evidence from which [the jury] could reach that conclusion, especially the less than candid testimony of two co-defendants in this case

... [R]easonable inferences could be drawn that, again, less than candor was exercised in this case, and that is one of the elements that this Court is compelled to consider when imposing sentence.

These reasons relate to the weight of evidence against Gamer and the lack of credibility of her co-defendants. The court did not, however, explain why this lack of credibility should affect Gamer's sentence; the State does not argue that Gamer induced these witnesses to testify as they did.

In her motion for sentence modification, Gamer argued that the trial court failed to consider factors it was required to consider and improperly considered other factors. She argues that as a result, the court's sentence was unduly harsh, an abuse of discretion, and a violation of her right to due process.

The State acknowledges that "a trial court is required to state reasons for sentencing to aid in appellate review and to facilitate a trial court's rationale of its sentences." See *Ruff v. State*, 65 Wis.2d 713, 727-30, 223 N.W.2d 446, 453-55 (1974). It also concedes that the trial court should focus on the gravity of the offense, the rehabilitative needs of the defendant, and the protection of the public. See *Elias v. State*, 93 Wis.2d 278, 284, 286 N.W.2d 559, 561 (1980).

The State points out that it brought to the court's attention the nature of the offense, comments as to Gamer's character, and "statements reflective of the public interest." The State also commented on Gamer's lack of prior record. The State argues that the trial court "obviously" incorporated these arguments into its reasoning when it sentenced Gamer. We cannot review the court's private reasoning.

A trial court exercises its discretion when it considers the facts of record and reasons its way to a rational, legally sound conclusion. *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519 (1971).

[W]here the record shows that the court ... considered the facts of the case and reasoned its way to a conclusion that is (a) one a reasonable judge could reach and (b) consistent with applicable law, we will affirm the decision even if it is not one with which we ourselves would agree.

Burkes v. Hales, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991) (footnote omitted).

We may look for reasons to sustain trial court discretionary decisions. *Schneller v. St. Mary's Hosp.*, 155 Wis.2d 365, 374, 455 N.W.2d 250, 254 (Ct. App. 1990), *aff'd*, 162 Wis.2d 296, 470 N.W.2d 873 (1991). However, the exercise of sentencing discretion is peculiarly the province of the trial court. It must weigh the sentencing factors; we cannot exercise the trial court's discretion. We therefore reverse the order denying Gamer's motion and remand the cause to the trial court for re-sentencing. Gamer apparently believes that she can convince the trial court or this court that her sentence was too harsh. She may be wrong but she will be heard; that is the essence of due process.

By the Court.--Judgment and order reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.