COURT OF APPEALS
DECISION
DATED AND RELEASED

January 9, 1996

NOTICE

No. 95-1258-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

        Plaintiff-Respondent,

  v.

ROBERT DANIEL RYAN,

        Defendant-Appellant.

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

    Before Sullivan, Fine and Schudson, JJ.

    PER CURIAM. Robert Daniel Ryan appeals from a judgment for burglary. *See* § 943.10(1)(a), STATS. Ryan also appeals from an order denying his motion for sentence modification. Ryan claims that the trial court erred in sentencing him to a term in excess of the sentencing guidelines without stating the reasons for the deviation. Ryan also claims that the trial court erroneously exercised its discretion in sentencing him to eight years in prison. We affirm.

Ryan was charged with one count of burglary. Ryan agreed to plead guilty in exchange for a recommendation by the State that he be placed under supervision of the Division of Intensive Sanctions for a period of four years. At sentencing, the trial court noted that the sentencing guideline matrix did not place Ryan in the category of offenders eligible for the Division of Intensive Sanctions program. Therefore, the trial court did not accept the State's recommendation and sentenced Ryan to serve eight years in prison. Ryan sought appellate relief, challenging the trial court's decision sentencing him to prison. His appeal was dismissed by this court for jurisdictional reasons. Thereafter, Ryan filed a motion for postconviction relief, seeking modification of his sentence. His motion was denied by the trial court, and this appeal followed.

Ryan argues that the trial court erred in sentencing him to a term in excess of the sentencing guidelines without stating the reasons for the deviation. In *State v. Halbert*, 147 Wis.2d 123, 131-133, 432 N.W.2d 633, 637 (Ct. App. 1988), this court held that a sentencing court's failure to consider the sentencing guidelines is not subject to appellate review by the court of appeals. Therefore, we cannot consider Ryan's argument regarding this issue. *Halbert* is good law. *State v. Elam*, 195 Wis.2d 683, 685, 538 N.W.2d 249, 249 (1995).

Ryan also appeals the trial court's denial of his motion to modify his sentence. He argues that the eight-year sentence imposed by the trial court was excessive and an erroneous exercise of the trial court's discretion. The trial court exercises discretion in sentencing, and, on appeal, review is limited to determining whether that discretion was erroneously exercised. *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary factors to be considered by the trial court are the gravity of the offense, the character of the offender, and the need to protect the public. *Id.*, 141 Wis.2d at 427, 415 N.W.2d at 541. An erroneous exercise of discretion occurs if the trial court fails to state on the record the factors influencing the sentence or if too much weight is given to one factor in the face of contravening factors. *Id.*, 141 Wis.2d at 428, 415 N.W.2d at 542.

Denying his motion for sentence modification, the trial court noted Ryan's prior criminal history. The trial court also acknowledged that Ryan represented a substantial risk to the community. Further, the trial court stated that the purpose of the sentence was to punish Ryan for his actions and, at the

same time, give him an opportunity to receive treatment during incarceration. Our review of the record indicates that the trial court considered the appropriate sentencing factors for the sentence it imposed. The trial court's sentence was not excessive.

By the Court.—Judgment and order affirmed.

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