COURT OF APPEALS
DECISION
DATED AND RELEASED

May 15, 1996

No. 95-1364-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHARLES E. ESTEP,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Kenosha County: ROBERT V. BAKER, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Charles E. Estep appeals from a judgment convicting him of being party to the crime of armed burglary, aggravated battery with a weapon, and first-degree reckless endangerment with a weapon, all as a repeater. He also appeals from the circuit court order denying his motion for sentence modification. Because the circuit court did not err in sentencing Estep or declining to modify his sentence, we affirm.

Estep pled no contest to the above-mentioned felonies. The incidents arose out of a home invasion by Estep and another during which persons in the home were terrorized and one was beaten. Although originally charged with seven felonies, Estep's plea agreement resulted in no contest pleas to three felonies; the other four were dismissed. The court sentenced Estep to a total of twenty-nine years in prison and a fifteen-year probation term to be served consecutively to the prison sentences. Estep moved the court to modify his sentence claiming that it was unduly harsh, that the court did not give sufficient weight to his traumatic childhood and that evidence of a 1992 diagnosis that he suffers from antisocial personality disorder, posttraumatic stress disorder and substance abuse constituted a new factor warranting sentence modification. The court declined to modify the sentence. Estep appeals.

We review whether the trial court misused its sentencing discretion. ***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). We presume that the trial court acted reasonably, and the defendant must show that the trial court relied upon an unreasonable or unjustifiable basis for its sentence. ***Id.*** The weight given to each of the sentencing factors is within the sentencing judge's discretion. ***Id.*** at 662, 469 N.W.2d at 195. Public policy strongly disfavors appellate courts interfering with the sentencing discretion of the trial court. *See* ***State v. Teynor,*** 141 Wis.2d 187, 219, 414 N.W.2d 76, 88 (Ct. App. 1987). We conclude that the trial court properly exercised its discretion in sentencing Estep and that its sentence does not shock public sentiment. *See* ***id.***

The primary factors to be considered by the trial court in imposing a sentence are the gravity of the offense, the offender's character and the need to protect the public. ***State v. Borrell,*** 167 Wis.2d 749, 773, 482 N.W.2d 883, 892 (1992).

Estep complains on appeal that the trial court did not consider his rehabilitative needs and that evidence that he suffers from posttraumatic stress and other disorders presented at the sentence modification hearing should have motivated the court to modify the sentence.

We disagree. The transcript of the sentencing hearing indicates that the court considered the following in sentencing Estep. The court reviewed the presentence investigation report which discussed Estep's traumatic and violent childhood, the gravity of the offenses (which the trial court found to be extreme), and Estep's character and conduct before and after the offenses. Given the nature of the offenses, the court concluded that the public required protection from Estep. For these reasons, the court imposed a total of twenty-nine years in prison. The court indicated that it expected Estep to receive treatment for alcohol and drug problems while in prison.

We see no misuse of the trial court's discretion. It was within the court's discretion to weigh the gravity of the offenses and Estep's character more heavily than the rehabilitative needs arising from Estep's traumatic childhood.

We also disagree with Estep that the 1992 diagnosis of posttraumatic stress and other disorders constituted a new factor requiring sentence modification. A new factor is a fact relevant to the imposition of the sentence and unknown to the trial court at the time of sentencing, ***State v. Kaster,*** 148 Wis.2d 789, 803, 436 N.W.2d 891, 897 (Ct. App. 1989), or which frustrates the sentencing court's intent. *See* ***State v. Michels,*** 150 Wis.2d 94, 100, 441 N.W.2d 278, 281 (Ct. App. 1989). Here, the court was aware of Estep's difficult childhood and its life-long impact. The fact that disorders were diagnosed in 1992 based upon facts which were before the court at the time of sentencing in 1994 is not a new factor.

Finally, Estep argues that the trial court's apparent misunderstanding as to when he would be eligible for parole invalidates the sentence. In sentencing Estep, the court did not refer to the possibility of parole. It was only at the hearing on Estep's sentence modification motion that the court speculated about the possibility of parole. There is no indication that the court relied upon the possibility of parole in fashioning Estep's sentence in the first instance. In referring to the possibility of parole, the court was indicating that any possibility of early release would be decided by the parole board.

By the Court.—Judgment and order affirmed.

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