

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 14, 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. 95-1374-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THOMAS DEFFKE,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

SULLIVAN, J. Thomas Deffke appeals from a judgment of conviction, after a no contest plea, for contributing to the delinquency of a child, contrary to § 948.40(1), STATS. He also appeals from an order denying his motion for postconviction relief. The trial court sentenced Deffke to six months incarceration in the Milwaukee County House of Correction with Huber privileges. Deffke challenges this sentence, arguing that the trial court erroneously exercised its discretion by placing "too much" emphasis on one of the sentencing factors that the trial court was required to consider during sentencing. Deffke also argues that his due process rights were violated at his sentencing by the trial court's alleged partiality. Finally, he argues that the trial

court erred by failing to disqualify itself under § 757.19(2)(g), STATS., because Deffke alleges the trial court could not act in an impartial manner in the case. This court rejects all three arguments and affirms.¹

I. BACKGROUND

At 2:25 a.m. on June 12, 1994, Village of Grafton Police Officer Emmitt Grissom, while stopped in a gas station parking lot, spotted an automobile, with a lone occupant, make an erratic turn onto Highway 60. Officer Grissom pursued the automobile, which accelerated and began weaving into the oncoming traffic lane. Officer Grissom activated his emergency lights and siren, and the car accelerated to speeds of over ninety miles per hour. At the intersection of Lakeshore and Ulao Roads in the Town of Grafton, the automobile exited the road, severing posts and trees before it slammed into a large tree on top of a bluff. The driver, Greta Abraham, was killed instantly due to massive trauma to the head and torso.

Abraham, a seventeen-year-old juvenile, had just graduated from Shorewood High School. The autopsy performed by the Milwaukee County Medical examiner revealed that Abraham had a blood alcohol level of “.26 gram percent ethyl alcohol.”

The criminal complaint filed against Deffke alleged that he and his wife had thrown a graduation party for their son, a classmate of Abraham's. According to the complaint, numerous affiants, both adults and juveniles, reported that many of the teenagers present at the party were drinking beer and other alcoholic beverages. Further, the affiants stated that Deffke knew that “drinking by kids was going on.” One juvenile stated that Deffke told him that “it was O.K. if the graduates drank, as long as they had their parents['] permission.” Finally, the affiants stated that Abraham was seen drinking beer at the party, and that she was “drunk.” Abraham and a friend left Deffke's house around midnight and went to the friend's house. At 1:00 a.m., Abraham told her friend that she was going for a walk, but instead she drove off in her car. She died a short time later.

¹ This appeal is decided by one judge, pursuant to § 752.31(2), STATS.

After a police investigation into Abraham's death, the Milwaukee County District Attorney's office charged Deffke with contributing to the delinquency of a child; namely, supplying Abraham, an underage juvenile, with alcoholic beverages.² After plea negotiations with the State, Deffke pleaded no contest to the charge and the trial court sentenced him.

II. ANALYSIS

Deffke first argues that the trial court erroneously exercised its sentencing discretion by placing “too much” emphasis on the need to protect the community and the gravity of the offense, in the face of other alleged mitigating factors. This court disagrees.

The supreme court has recently considered the issue of trial court sentencing:

Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. We recognize a “strong public policy against interference with the sentencing discretion of the trial court and sentences are afforded the presumption that the trial court acted reasonably.” This court is reluctant to interfere with a trial court's sentence because the trial court has a great advantage in considering the relevant factors and the demeanor of the defendant. The defendant must show some unreasonable or unjustifiable basis in the record for the sentence imposed.

The trial court must articulate the basis for the sentence imposed on the facts of record. There should be evidence in the record that discretion was in fact exercised.

² The State acknowledges that Deffke did not provide Abraham with all the alcohol she consumed. Other adults purchased alcohol for her as well.

The primary factors the trial court must consider in imposing sentence are: (1) the gravity of the offense, (2) the character and rehabilitative needs of the offender, and (3) the need for protection of the public. As part of these primary factors the trial court may consider: the vicious and aggravated nature of the crime; the past record of criminal offenses; any history of undesirable behavior patterns; the defendant's personality, character and social traits; the results of a presentence investigation; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance, and cooperativeness; the defendant's need for rehabilitative control; the right of the public; and the length of pretrial detention.

State v. Echols, 175 Wis.2d 653, 681-82, 499 N.W.2d 631, 640-41 (1993) (citations omitted). Further, the weight to be given to each of the factors is within the trial court's discretion. *State v. Curbello-Rodriguez*, 119 Wis.2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984).

Deffke argues that the trial court's statements during sentencing concerning Abraham's death show that the trial court was basing its sentence on the death of Abraham, an incident that Deffke was not charged with by the State. This court disagrees with Deffke's argument that the trial court erroneously placed too much weight on Abraham's tragic death in sentencing him.

The gravity of a defendant's offense is a primary sentencing factor; likewise, so is the need to protect the public. In considering these factors, the trial court should review the entirety of the events surrounding the commission of the crime. In this case, Deffke pleaded guilty to contributing to the delinquency of a child, the premise of which was Deffke's tacit supplying of Abraham with alcoholic beverages at his son's graduation party. Abraham later died as a result of a car accident in which alcohol was clearly a substantial

factor. While it is unclear exactly how much of the alcohol supplied at Deffke's party led to Abraham's .26 percent blood alcohol level, clearly Abraham was intoxicated when she left Deffke's home. Several of the affiants to the criminal complaint attest to this fact. The trial court was rightly concerned that the ultimate gravity of the charged offense was greater because of Abraham's death. One cannot completely separate the chain of events that led to this tragic death—and Deffke's supplying of alcohol was one of these inseparable events. The trial court properly considered this factor, and this court cannot conclude that the trial court erroneously exercised its discretion by placing “too much emphasis” on this factor. *Id.* Further, the record shows that the trial court reviewed the mitigating factors and affidavits and testimony filed in support of Deffke before sentencing him. Thus, this court cannot ascertain an erroneous exercise of discretion on the part of the trial court.

Deffke next contends that his due process rights were violated by the trial court's alleged partiality resulting out of its focus on Abraham's death. His argument is specious. While it is clear that the trial court was concerned throughout the proceedings about Abraham's death, this court's *de novo* review of the record locates not one scintilla of evidence that the trial court treated Deffke unfairly. See *State v. Rochelt*, 165 Wis.2d 373, 378-79, 477 N.W.2d 659, 661-62 (Ct. App. 1991). “A litigant is denied due process *only* if the judge, in fact, treats him or her unfairly. A litigant is not deprived of fundamental fairness guaranteed by the constitution either by the appearance of a judge's partiality or circumstances which might lead one to speculate as to his or her partiality.” *State v. Hollingsworth*, 160 Wis.2d 883, 894, 467 N.W.2d 555, 560 (Ct. App. 1991) (emphasis added, citation omitted). The record fails to show how the trial court treated Deffke unfairly.

Finally, Deffke questions whether the sentencing judge made an objective determination requiring disqualification under § 757.19(2)(g), STATS. His argument on this issue is cursory and insufficiently developed; accordingly, this court will not address it. *State v. Pettit*, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992) (court of appeals may decline to review an issue inadequately briefed).

By the Court.—Judgment and order affirmed.

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