COURT OF APPEALS
DECISION
DATED AND RELEASED

JANUARY 30, 1996

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. 95-1972-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JASON R. KUEHN,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Lincoln County: J. MICHAEL NOLAN, Judge. *Affirmed*.

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

PER CURIAM. Jason Kuehn appeals a judgment sentencing him to a total of twenty-one years in prison for battering a staff member at the Lincoln Hills School, a juvenile detention facility, and assaulting two staff members. He argues that the charges are multiplicitous and that the sentence is excessive. We reject these arguments and affirm the judgment.

After being frustrated when a planned escape failed, Kuehn and another inmate planned to attack two staff members at their cottage. Kuehn's accomplice swore that he would kill one of the staff and indicated he would rape the other if he had the chance. The two inmates attacked the staff after meal time, hitting them in the face with food trays, cutting the lip of the female staff member, and beating the other with a broomstick and trying to stab him with the pointed end of the stick after it broke. The purpose of the attack was to hurt or kill the male staff member because he had stated he did not care when Kuehn reported that his ribs hurt a couple days earlier. They also thought the attack would cause them to be sentenced to an adult prison where "you get TV in your cell, you can smoke, you can even get weed and stuff."

Pursuant to a plea agreement, Kuehn pled guilty to one count of battery and two counts of assault. In return, one count of battery and one count of assault were dismissed. The recommended minimum sentence for the battery is three years, for the assaults five years each. The court sentenced Kuehn to four years on the battery and consecutive eight- and nine-year terms on the assault counts.

The charges are not multiplicitous. Kuehn concedes that the charges are not technically multiplicitous, but nonetheless urges this court to limit his prison exposure because the three crimes occurred at one time. The battery occurred when Kuehn hit the staff member in the face with a tray cutting her lip. That act and others caused her to reasonably fear death or great bodily harm. The second assault involved another staff member. Separately charging these offenses is not multiplicitous, technically or otherwise. *See* ***State v. Richter***, 189 Wis.2d 105, 109, 525 N.W.2d 168, 169 (Ct. App. 1994). We decline to create any new law that would limit a criminal to a single sentence or punishment for several crimes arising out of a single act. Furthermore, Kuehn's behavior is not reasonably described as a single act.

Kuehn next argues that the trial court failed to consider pertinent factors and circumstances when imposing sentence. The trial court noted Kuehn's age, his escalating behavior problems and his failure to respond to rehabilitation efforts. The court's discussion of the seriousness of the offenses, Kuehn's character and the need to protect the public satisfies the requirement that the court articulate the basis for its sentence. *See* ***State v. Harris***, 119 Wis.2d 612, 623, 350 N.W.2d 633, 638 (1984). Sentencing is not an exact science. A trial

court is not required to embark upon a metaphysical expedition to trace a precise mathematical relationship between each sentencing element and the length of each sentence. It is enough that the court states on the record the reasons for its sentence as it relates to each factor.

The imposition of near-maximum consecutive sentences is not excessive, unusual or disproportionate in light of Kuehn's participation in a plan that could well have led to a murder. *See* ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Considering the recommended minimum sentences, Kuehn's expressed desire to be sent to an adult facility and the vicious nature of this senseless attack by a person already incarcerated, imposing concurrent sentences would have depreciated from the seriousness of the offenses.

By the Court.—Judgment affirmed.

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