

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JUNE 11, 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.

**Nos. 95-2371-CR
95-2372-CR
95-2373-CR
95-2374-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL D.J. CROCHIERE,

Defendant-Appellant.

APPEALS from judgments and orders of the circuit court for Marathon County: RAYMOND F. THUMS, Judge. *Affirmed.*

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

PER CURIAM. Michael D.J. Crochiere appeals judgments convicting him of four felonies and two misdemeanors and orders denying his postconviction motions. He argues that his trial attorneys were ineffective because they waived the preliminary hearing in several felony cases, failed to

file motions for discovery or inspection, and did not move to suppress Crochiere's inculpatory statements. He also challenges the sentences imposed and argues that his due process rights are violated by this court's standard of review and that Wisconsin courts should be required to adopt sentencing guidelines. We reject these arguments and affirm the judgments and orders.

Crochiere was initially charged with conspiracy to commit armed robbery, three counts of bail-jumping, two counts of burglary and misdemeanor theft. Pursuant to a plea agreement, he pled guilty to conspiracy to commit theft, misdemeanor trespass, two counts of bail-jumping, and one count each of felony and misdemeanor theft. He was sentenced to consecutive terms totaling ten years in prison to be followed by five years' probation.

To prevail on a claim of ineffective assistance of counsel, Crochiere must show that his counsel performed deficiently and that the deficient performance prejudiced his defense. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Crochiere has established neither deficient performance nor prejudice from his counsels' failure to have a preliminary hearing in each of the felony cases, to move for discovery or inspection or to move to suppress his statements. At his postconviction hearing, Crochiere did not ask his trial attorneys to explain these decisions. A claim of ineffective assistance of counsel cannot be reviewed on appeal unless trial counsel is given an opportunity to explain strategic decisions. See *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908 (Ct. App. 1979). Depending on the nature of the case, the client's communications with his attorney and the practices of the district attorney regarding access to police reports, counsel might reasonably waive the preliminary hearing and rely on informal discovery. The record shows no basis for challenging counsels' decisions on these matters and no basis for suppressing Crochiere's statements. Crochiere has established no prejudice from his counsels' decision. His attorneys reasonably pursued a strategy of negotiated settlement that substantially reduced his sentencing exposure.

Crochiere argues that the trial court improperly exercised its sentencing discretion by placing too much emphasis on his juvenile record. There is a strong public policy against interference with the trial court's

sentencing discretion. See *State v. Roubik*, 137 Wis.2d 301, 310, 404 N.W.2d 105, 108 (Ct. App. 1987). The trial court must consider the gravity of the offenses, the defendant's character and the need to protect the public. See *McCleary v. State*, 49 Wis.2d 263, 274, 182 N.W.2d 512, 518 (1971). The weight to be given to each of the factors is within the trial court's discretion. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Here, the trial court placed substantial emphasis on Crochiere's juvenile record because it is highly relevant to an evaluation of his character and the need to protect the public. Crochiere's juvenile record over the preceding six years shows a repeated failure to respond to treatment and supervision and a tendency to blame others or external events for his criminal behavior. Crochiere was only eighteen years old at the time of his conviction. To ignore his juvenile record would require the court to ignore almost everything that is known of him.

Finally, we reject Crochiere's arguments that the standard of review applied by appellate courts lacks precision and definition so as to violate his due process rights and that Wisconsin courts should be required to adopt sentencing guidelines. This court has no authority to overturn decades of rulings from the Wisconsin Supreme Court giving sentencing courts substantial discretion when imposing sentence. The Supreme Court has twice declined to promulgate sentencing guidelines and the legislature has repealed the sentencing guideline law that had been in existence prior to 1995. See *In re Felony Sentencing Guidelines*, 120 Wis.2d 198, 200-01, 253 N.W.2d 793, 795 (1984). The legislature and the Supreme Court have chosen to allow sentencing courts substantial discretion to tailor the sentence to reflect the seriousness of the crimes, the defendant's character and need for rehabilitation and protection of the public.

By the Court.—Judgments and orders affirmed.

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