COURT OF APPEALS
DECISION
DATED AND RELEASED

JUNE 18, 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.95-2408-CR
95-2409-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PATRICK T. ROBERTS,

Defendant-Appellant.

APPEALS from judgments and an order of the circuit court for Marathon County: ANN WALSH BRADLEY, Judge. *Affirmed*.

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

PER CURIAM. Patrick Roberts appeals his conviction for bail jumping and second-degree sexual assault of a child, having pleaded no contest to the charges. By postconviction motion, he alleged that the trial court improperly sentenced him to five years in prison, while his two accomplices received probation with six-month and thirty-day jail terms, respectively. Roberts also sought to withdraw his plea on the ground that his trial counsel's

plea legal advice had the effect of inducing the plea by threat. Trial counsel warned Roberts that he could receive a harsher sentence by trial than by plea. We reject Roberts' arguments and, therefore, affirm his conviction.

Trial courts have wide discretion in their sentencing decisions. ***State v. Evers***, 139 Wis.2d 424, 452, 407 N.W.2d 256, 268 (1987). Sentencing courts consider a wide array of factors, including the gravity of the offense, the character of the defendant, the protection of the public, the interests of deterrence, the defendant's degree of culpability, the nature of his prior record, and his level of remorse. ***State v. Perez***, 170 Wis.2d 130, 143, 487 N.W.2d 630, 635 (Ct. App. 1992). Sentences must have a reasonable basis in the record and demonstrate a logical process of reasoning based on the facts of record, and proper legal standards. ***McCleary v. State***, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519-20 (1971).

Differences in sentences do not by themselves show that the sentences were impermissibly disparate. ***Perez***, 170 Wis.2d at 144, 487 N.W.2d at 635. Leniency in one case does not transform a reasonable punishment in another case into an impermissible one. ***Id***. Litigants claiming impermissibly disparate sentences have the burden of proving this claim, often by showing that the disparity was arbitrary or based on considerations not pertinent to proper sentencing. ***Id***. In other words, the trial court's sentence enjoys a presumption of correctness that the defendant has the burden of overcoming. Here, Roberts has not shown that his sentence was impermissibly disparate.

In essence, Roberts claims that he and his accomplices displayed equivalent degrees of culpability in the sexual assault itself and that he therefore deserved an equivalent sentence. Comparable culpability is only one of many factors that control a sentence's fairness. Roberts did not demonstrate to the trial court that he and his accomplices had similar backgrounds, character shortcomings or rehabilitative needs. He is unable to point to anything in the record on these issues. Roberts had the burden of bringing such evidence to the trial court's attention. In the absence of such evidence, we conclude that the trial court sentenced Roberts in proportion to his culpability, background, rehabilitative needs and the public's need for protection from him.

Roberts also has not shown that his plea was involuntary. Roberts may invalidate his plea if it was not intelligent and voluntary. ***State v. James***, 176 Wis.2d 230, 238, 500 N.W.2d 345, 348 (Ct. App. 1993). However, trial counsel's legal advice concerning possible sentences does not constitute a threat that the law recognizes as invalidating a plea. Most defendants enter pleas in the expectation that the plea will produce a lesser sentence than would result after a trial. Fear of greater sentences is an inherent part of the plea process. It is not something that constitutes an impermissible, plea invalidating threat. In sum, Roberts has provided no basis for withdrawing his no contest plea.

By the Court.—Judgments and order affirmed.

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