COURT OF APPEALS
DECISION
DATED AND RELEASED

MAY 21, 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. 95-2834-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

OTIS E. JOHNSON,

Defendant-Appellant.

APPEAL from an order of the circuit court for Marathon County: MICHAEL W. HOOVER, Judge. *Affirmed*.

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

PER CURIAM. Otis Johnson appeals an order denying his motions for resentencing. He argues that the trial court applied a preconceived sentencing policy and failed to consider significant mitigating circumstances when it sentenced him to twenty years in prison. We reject these arguments and affirm the order.

Johnson was initially charged with three counts of sexual intercourse with a child. Pursuant to a plea agreement, he entered a no contest plea to count one. Counts two and three were dismissed but read in for sentencing. The court initially withheld sentence and placed Johnson on probation for five years. His probation was revoked after Johnson failed to keep appointments with a sex offender treatment program. The trial court then sentenced him to twenty years in prison.

The primary factors a sentencing judge must consider are the gravity of the offense, the character and rehabilitative needs of the defendant and the need to protect the public. *See* ***State v. Sarabia***, 118 Wis.2d 655, 673, 348 N.W.2d 527, 537 (1984). As part of these primary factors, the court may consider the aggravated nature of the offense, the defendant's criminal record, his history of undesirable behavior patterns, his personality, character and social traits, the presentence report, the degree of the defendant's culpability, his demeanor at trial, his age, education, background and employment record, his remorse, repentance and cooperativeness, the need for rehabilitative control and the rights of the public. There is a strong policy against interference with the trial court's discretion in imposing sentence. *See* ***State v. Borrell***, 167 Wis.2d 749, 773-74, 482 N.W.2d 883, 892 (1992). Here, the trial court specifically noted the seriousness of the offense, a three-year pattern of intercourse with his daughter commencing when she was nine years old. The court also noted Johnson's failure to positively respond to probation and his failure to accept responsibility for his acts. Imposition of the maximum sentence is justified by the trial court's findings.

In the process of pronouncing sentence, the trial court made two statements that Johnson contends demonstrate a preconceived sentencing policy. First, after counsel had completed their arguments and the court announced that it would sentence Johnson to twenty years, the court noted that the sentence was indeterminate and that Johnson might be able to convince the parole board "what he would never be able to convince me [Judge Hoover] of, which is that he is worthy of release on parole short of the mandatory release date ...." This comment does not establish that the trial court applied a preconceived sentencing policy. The statement was made after the sentence was pronounced and reflects the court's postsentence attitude about the prospect of parole.

The second statement, "you don't get to have the same opportunity twice, Mr. Johnson," refers specifically to this case and does not establish a predetermined policy of harsh sentences for defendants who violate their probation.

Johnson contends that the trial court failed to consider mitigating circumstances, particularly statements by the victim and her mother that they did not wish to see him sent to prison. The trial court acknowledged on the record that it was taking those statements into consideration. In its discretion, the trial court can reasonably give little weight to the request for leniency from the victim, Johnson's daughter, and his ex-wife. While the wishes of the victim are a relevant factor to consider, the weight to be given each factor is within the trial court's discretion. ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

By the Court.—Order affirmed.

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