

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 12, 2007**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2006AP408-CR**

**Cir. Ct. No. 2004CF221**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CRAIG A. SWOPE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Snyder, J.

¶1 PER CURIAM. Craig A. Swope has appealed from a judgment convicting him of twenty counts of forgery. He has also appealed from an order denying his motion for sentence modification or resentencing. Swope contends that the trial court erroneously exercised its discretion by sentencing him based

upon inaccurate information and by imposing sentences that were disproportionate to the offenses and unduly harsh. We reject both contentions and affirm the judgment and order.

¶2 Swope was initially charged with thirty-three counts of forgery, and one count each of possession of an electric weapon and possession of a firearm by a convicted felon. Pursuant to a plea agreement, he pled guilty to the first twenty forgery counts, and the remaining charges against him were dismissed and read in. He was sentenced to consecutive terms of three years of initial confinement and three years of extended supervision for each of the first six forgery counts. He was sentenced to a consecutive term of two years of initial confinement and three years of extended supervision for the seventh count, for a total of twenty years of initial confinement and twenty-one years of extended supervision. The trial court withheld sentence and placed Swope on ten years of probation for the remaining counts, consecutive to the sentences for counts one through four and concurrent to the sentences for counts five through seven.

¶3 The forgery convictions were based on evidence that Swope forged a power of attorney form and checks from the account of his deceased parents. According to Swope, he went to his parents' home on January 4, 2004, and found them both dead. He did not report their deaths and instead took their checkbook and forged checks totaling nearly \$43,000. He also forged a power of attorney form purported to be signed by his parents. The bodies of Swope's parents were not discovered until February 29, 2004, when his daughters contacted the sheriff's department and expressed concern about their inability to contact their grandparents. The bodies were badly decomposed when they were discovered.

¶4 Swope's first argument is that the trial court sentenced him, at least in part, based upon inaccurate information. A defendant who moves for resentencing on the ground that the trial court relied on inaccurate information must establish that there was information before the sentencing court that was inaccurate, and that the trial court actually relied on the inaccurate information. *State v. Tiepelman*, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1. If the defendant meets his or her burden of showing that the sentencing court actually relied on inaccurate information, the burden shifts to the State to establish that the error was harmless. *Id.*, ¶3.

¶5 Swope contends that the trial court unreasonably inferred that his parents died as a result of foul play and that he killed them. He contends that the trial court relied on this inaccurate inference when imposing sentence.

¶6 The record does not support Swope's argument. While the trial court discussed the unusual and suspicious circumstances surrounding the deaths, its comments at both sentencing and the postconviction hearing establish that it did not conclude that Swope killed his parents or rely on such an inference in sentencing him.

¶7 In reaching this conclusion, we note that at sentencing, the trial court prefaced its discussion of the description of the offense by stating: "I note that the defendant ... claims that he discovered these two bodies. I don't have any basis to doubt that." While the trial court then proceeded to discuss the deaths, it did so in the context of concluding that Swope's failure to report the deaths when he discovered his parents' bodies reflected on his character. It noted that the delay in discovering the bodies made it more difficult to ascertain the cause of their deaths, and that Swope's actions were motivated by greed. It determined that he used the

situation for his personal financial gain, choosing to take his parents' checkbook and write checks on their account over the next several weeks rather than reporting their deaths. It further noted that Swope made these withdrawals from his parents' account while deceiving his daughters about their grandparents' well being. In addition, it noted that Swope had previously been convicted of embezzling nearly one million dollars from his former employer and that, in an attempt to avoid restitution, he had transferred assets to his parents, purportedly to help the daughters that he ultimately deceived.

¶8 The trial court reasonably and properly considered these facts in determining that Swope's conduct was outrageous and reprehensible, and that it reflected on his personality, character, social traits, and undesirable behavior patterns. While reiterating that it did not know how Swope's parents died and that it was not saying Swope was responsible, it concluded that by his actions, Swope "made it far more likely that the real cause of death of these people would not be determined; and he did it out of greed." The trial court's determination that Swope's failure to report his parents' death was motivated by greed and impeded an investigation into the cause of their deaths cannot be deemed inaccurate and does not constitute a determination that he killed them.

¶9 The trial court summarized and reiterated its sentencing analysis at the postconviction hearing, stating that it did not rely on a conclusion that Swope killed his parents when it sentenced him. Because our independent review of the sentencing transcript confirms the trial court's assertion that it did not sentence Swope based on a belief that he killed his parents, no basis exists to conclude that the trial court relied on inaccurate information in sentencing Swope.

¶10 We also reject Swope’s argument that the sentences were unduly harsh and disproportionate to the offenses. Appellate review of a sentencing decision is limited to determining whether the trial court erroneously exercised its discretion. *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. When the exercise of discretion has been demonstrated at sentencing, this court follows a strong and consistent policy of refraining from interference with the trial court’s decision. *Id.* We afford a strong presumption of reasonability to the trial court’s sentencing determination because that court is best suited to consider the relevant factors and demeanor of the convicted defendant. *Id.*

¶11 The sentence imposed should represent the minimum amount of custody or confinement that is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. *Id.* However, “minimum” does not mean “exiguously minimal,” or insufficient to accomplish the goals of the criminal justice system. *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483.

¶12 When a defendant contends that his sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. *Stenzel*, 276 Wis. 2d 224, ¶21. “A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.*, ¶22 (citation omitted).

¶13 Applying these standards here, no basis exists to disturb the sentences imposed on Swope. In determining that a lengthy sentence was necessary, the trial court considered that Swope committed these new offenses after being convicted of embezzling nearly a million dollars. It noted that he had received only a moderate sentence for that offense, but rather than demonstrating remorse and rehabilitation, he had avoided restitution and committed these new offenses. It considered that in doing so, he had cheated his children, prevented or impeded an investigation into the cause of his parents' deaths, and injured others who cared about his parents. It concluded that Swope's history and conduct in this case reflected poorly on his character and established that he had not been rehabilitated and posed a threat to other people who have money. It considered that a lengthy sentence was necessary to deter him from committing new crimes and to protect the public. It further concluded that a short sentence would unduly depreciate the seriousness of these offenses.

¶14 As determined by the trial court in denying postconviction relief, Swope's citation to four other cases where repeat offenders received shorter sentences for forgeries does not establish that Swope's sentences were unduly harsh. The trial court considered the relevant sentencing factors in imposing sentence and acted within the scope of its discretion in determining that Swope's history and character, in conjunction with the facts surrounding these crimes, warranted a lengthy sentence. Based upon the factors considered by the trial court, and since Swope faced a potential sentence of 120 years' imprisonment for the twenty forgery convictions, we cannot conclude that sentences totaling forty-one years of imprisonment shock public sentiment or violate the judgment of reasonable people concerning what is right and proper under the circumstances.

We therefore conclude that Swope has failed to establish that his sentences are unduly harsh or disproportionate to the offenses.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

