

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2007AP1124-CR

Cir. Ct. No. 2006CF27

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVE L. TRATTNER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Ozaukee County: THOMAS R. WOLFGRAM, Judge. *Affirmed.*

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. Steve L. Trattner has appealed from a judgment convicting him upon a no contest plea of first-degree reckless homicide in

violation of WIS. STAT. § 940.02(1) (2005-06)¹ for the murder of his wife. He was sentenced to thirty-five years of initial confinement and ten years of extended supervision. Trattner has also appealed from an order denying his postconviction motion for resentencing.

¶2 On appeal, Trattner contends that the trial court relied upon inaccurate information at sentencing. He also contends that the sentence violated due process because it punished him in part for a mental condition over which he had no control. In addition, he contends that the trial court erroneously exercised its sentencing discretion by failing to explain why the sentence imposed, as opposed to a lesser sentence, was necessary. Because we conclude that these issues lack merit, we affirm the judgment and order.

¶3 It is undisputed that Trattner beat and strangled his wife on the night of January 4, 2006, after she told him that she wanted a divorce. After attacking her, Trattner moved his wife's body into the living room, put a pillow under her head and covered her with blankets, and went to his bedroom. In the morning, he helped his children get to school, and went to a business meeting and lunch. After returning home, he placed sleeping pills by his wife's body and called the police. In statements made by him to the police and the presentence investigation report (PSI) writer, he indicated that he felt threatened by his wife and feared for his safety when he attacked her. He also indicated that he wanted to believe that he would have stopped attacking his wife if she had asked.

¹ All references to the Wisconsin Statutes are to the 2005-06 version.

¶4 At sentencing, the trial court expressed its concern that Trattner lacked remorse and was failing to take responsibility for his actions. The trial court concluded that Trattner's statements regarding self-defense were absurd, and that "[i]f he believes it he is just fooling himself." The trial court further stated that "if he believes it he is just deluding himself, because he is not deluding me." It labeled his statement to the PSI writer about stopping "ridiculous," and stated: "It's just another example of his denial, his lack of acceptance of responsibility, his lack of empathy for the victim." It stated: "His lack of remorse and lack of acceptance of responsibility troubles me deeply."

¶5 Trattner's first argument is that the trial court relied upon inaccurate information when, at sentencing, it relied upon his statements about feeling threatened by his wife to conclude that he lacked remorse and failed to accept responsibility for his actions. He contends that the postconviction testimony and report of Dr. Kenneth Robbins, a psychiatrist, establish that his assertions of self-defense arose from a mental condition over which he had no control, rather than a conscious attempt to deflect blame, and that the trial court therefore based its findings regarding lack of remorse and failure to accept responsibility on inaccurate information.

¶6 A defendant has a due process right to be sentenced on the basis of accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. Whether a defendant has been denied this right presents a constitutional issue that this court reviews de novo. *Id.*

¶7 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. *Id.*, ¶31. 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.

¶8 Based upon our review of the record, we are not persuaded that inaccurate information was presented at sentencing. At sentencing, the trial court considered a report prepared by Dr. Robbins dated August 27, 2006, describing his evaluation of Trattner. In that report, Dr. Robbins concluded that Trattner was intelligent, with a strong conscience and respect for the law and by all accounts had previously led an exemplary life, but that he had an extraordinarily limited emotional capacity. Dr. Robbins stated that Trattner had never learned how to effectively deal with conflict and that throughout his life it had been critical to him that he be viewed by others as a good person. Dr. Robbins indicated that Trattner lacked the skills to deal with his wife's frustrations with the marriage and that when her anger became clear to him on January 4, 2006, he believed that she wanted to hurt him. Dr. Robbins opined that Trattner became frightened and believed his wife wanted to kill him, resulting in the eruption of long-dormant anger. Dr. Robbins further opined that Trattner's behavior after the murder was directed to the need to preserve his self image as a good person, and that it was an integral part of his personality, not a volitional choice.

¶9 In discussing his conclusions further in his August 27, 2006 report, Dr. Robbins opined that Trattner did not have the ability to make sense of his terrible actions and could not tolerate the concept that others would think poorly of him for killing his wife, compelling him to provide an explanation that offered reassurance that he was still a nice person. Dr. Robbins indicated that Trattner's need to avoid conflict, help others feel less guilt about the death, and have himself

and others see him as a good person led him to make confusing and poor choices at the time of the crime and after it. As an example, Dr. Robbins indicated that when given the opportunity to speak about the events of January 4, 2006, Trattner felt compelled to give an explanation that offered reassurance that he continued to be a nice person, even when he was informed that it had the potential to make him appear unremorseful and lead to a longer sentence. Dr. Robbins stated: “The intense anxiety he experiences when he behaves in any other way continues to drive his choices.”

¶10 In a postconviction report dated January 22, 2007, and in his testimony at the postconviction hearing, Dr. Robbins essentially added to and expanded upon the information previously provided by him.² In his report, he concluded that Trattner suffered from a condition known as alexithymia, which prevented him from identifying, understanding, or describing his emotions. He concluded that as a consequence, Trattner did not recognize how angry he was and take steps to control his anger before erupting on January 4, 2006. He stated that Trattner also had no ability to view himself as someone who would harm anyone else unless forced to do so to protect himself and, therefore, asserted self-defense after the crime. Dr. Robbins indicated that Trattner tried to persuade himself and others that the crime was self-defense not as a conscious choice, but because his emotional structure offered him no other option.

¶11 At the postconviction hearing, Dr. Robbins testified that Trattner honestly believed he was threatened on January 4, 2006. He testified that Trattner

² For this reason, at the postconviction hearing, Trattner’s counsel conceded that the testimony and postsentencing report of Dr. Robbins did not constitute a new factor for purposes of sentencing.

had alexithymia, and was overwhelmed by the situation on January 4, 2006. He repeated that Trattner was unable to view himself as someone who would harm anyone else absent the need for self-defense and that to maintain his belief that he was a nice person, he had to believe and persuade others that he had no choice when he attacked his wife. Dr. Robbins emphasized that the manner in which Trattner described the crime and his conduct afterwards was not a conscious choice on Trattner's part, but was instead the only way he had to deal with the situation psychologically, even when told that it made him look unremorseful. Dr. Robbins stated that Trattner was unique because he did not have the capacity to accept that he did something evil.

¶12 At the postconviction hearing, Dr. Robbins conceded that even though his first report did not use the word "alexithymia," that report discussed Trattner's emotional limitations and indicated that Trattner's psychological make-up could lead him to be perceived as unremorseful. He acknowledged that someone could see the situation as indicating that Trattner was deluding himself.

¶13 Based upon this record, we reject Trattner's claim that the trial court relied upon inaccurate information at sentencing. At sentencing, the trial court was aware of Trattner's claim that his meritless assertion of self-defense was not the result of a conscious effort to shift blame to the victim, but was instead part of a personality structure over which he had no control. The postsentencing diagnosis of alexithymia does not render what the trial court knew and relied upon at the time of sentencing inaccurate. At most, Dr. Robbins' postsentencing report and testimony provided a basis for a greater appreciation of information that existed at the time of sentencing. However, it is clear that at sentencing, the trial court was aware of Trattner's contention that his statements regarding self-defense and his conduct after the murder were the unconscious results of his psychological

make-up, and were not indicative of his lack of remorse or conscious efforts to avoid taking responsibility for his actions. While Dr. Robbins expanded upon his opinions in his postconviction report and testimony, the additional report and testimony provide no basis to conclude that the original sentencing record contained inaccurate information. The trial court was aware of and considered Dr. Robbins' August 2006 report and Trattner's argument based upon it. As noted by the State, the trial court's failure to accept Dr. Robbins' opinion regarding the motivation for and significance of Trattner's conduct does not mean that it relied upon inaccurate information regarding Trattner's psychological make-up. The trial court was entitled to reject the explanation proffered by the defense and view Trattner's statements and conduct as revealing that he lacked remorse and failed to accept responsibility for his actions.³

¶14 Trattner's related argument is that the sentence imposed on him violated due process because it was based, in part, on a mental condition over which he had no control. However, as acknowledged by Trattner, he pled guilty to first-degree reckless homicide and did not pursue a claim of not guilty by reason of mental disease or defect. He was therefore sentenced for committing homicide, not for a mental condition.⁴ Moreover, as already discussed, the trial court was not required to accept Dr. Robbins' opinion that Trattner's statements and conduct

³ Trattner argues that, at the postconviction hearing, the trial court implicitly found Dr. Robbins' testimony to be true. The trial court made no such finding, expressly or implicitly. It merely indicated that it was aware of Dr. Robbins' opinions about Trattner's psychological make-up at the time of sentencing, and stated: "For what it's worth, it wasn't the kind of factor that you tack on years for ... or subtract any amount of time because a person had the ability to demonstrate remorse or show remorse or express remorse. He did say he was sorry."

⁴ Trattner's situation is thus distinguishable from the cases cited by him, including *Robinson v. California*, 370 U.S. 660, 666-67 (1962), which held that a statute that criminalized addiction to narcotics was unconstitutional.

were nonvolitional. A sentencing court is free to accept or reject expert opinion testimony, and to draw its own inferences from facts. *See State v. Slogoski*, 2001 WI App 112, ¶9, 244 Wis. 2d 49, 629 N.W.2d 50. The trial court was therefore entitled to conclude that Trattner's statements and conduct revealed a lack of remorse or failure to accept responsibility for his conduct.

¶15 Trattner's final argument is that sentencing was inadequate because the trial court, while imposing what was essentially a life sentence, did not explain why a lesser sentence was unwarranted.⁵ Sentencing is left to the discretion of the trial court and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. When the proper 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. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76. 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.*

¶16 To properly exercise its discretion, a trial court must provide a rational and explainable basis for the sentence. *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. It must specify the objectives of the sentence on the record, which include, but are not limited to, protection of the community, punishment of the defendant, rehabilitation of the defendant, and

⁵ Trattner was forty-four years old at the time of sentencing. The trial court conceded that by sentencing him to thirty-five years of initial confinement, it was probably giving him a life sentence.

deterrence of others. *Id.* The primary sentencing factors that a trial court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Ziegler*, 289 Wis. 2d 594, ¶23. However, the weight to be given each sentencing factor remains within the wide discretion of the trial court. *Stenzel*, 276 Wis. 2d 224, ¶9.

¶17 The “sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *Gallion*, 270 Wis. 2d 535, ¶23. However, in imposing the minimum amount of custody consistent with the appropriate sentencing factors, “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. Moreover, while the trial court must provide its sentencing rationale on the record, a defendant is not entitled to a mathematical breakdown of how each sentencing factor translates into a specific term of confinement. *State v. Fisher*, 2005 WI App 175, ¶¶21-22, 285 Wis. 2d 433, 702 N.W.2d 56. *Gallion* requires an explanation but not mathematical precision. *See Ziegler*, 289 Wis. 2d 594, ¶25.

¶18 Applying these standards here, we conclude that no basis exists to disturb the sentence. The trial court acknowledged its responsibilities under *Gallion* and the sentencing factors it was required to consider and address on the record. It addressed Trattner’s character, concluding that he deserved credit for his past behavior and history of being a responsible person. It acknowledged the high opinion many people held of him, and his lack of prior contact with the criminal justice system. However, it expressly stated that the primary factor in its sentencing decision was the seriousness of the crime.

¶19 In discussing the seriousness of the crime, the trial court determined that it was on the “highest end of the scale” in terms of seriousness, that Trattner was “100%” responsible, and that the offense was on the “extreme edge” of what constituted reckless homicide. It noted that the crime was violent and brutal, and that Trattner had time to stop as he beat and strangled his wife, but did not. It concluded that the crime was aggravated by multiple factors, including Trattner’s conduct in dragging his wife’s body into the living room and covering it with blankets rather than seeking assistance for her. It considered that the children could have come into the room and seen their mother during or after the attack and that Trattner left her lie there while he engaged in his normal activities the next morning. It also found his attempt to “cover his tracks” by placing sleeping pills near her to be aggravating.

¶20 The trial court viewed Trattner’s conduct and statements as evincing a lack of acceptance of responsibility for his crime, and a lack of empathy for the victim and other people he hurt. It indicated that it needed to impose a sentence that would not depreciate the seriousness of the offense in either Trattner’s mind or the mind of the public. It also expressed concern for the safety of the public, noting that Trattner committed this crime despite having what Dr. Robbins termed a “strong moral compass.”

¶21 Based upon these factors, the trial court stated that it was rejecting probation. It stated that anything less than a substantial period of time in prison would be an abrogation of its responsibility as a judge. It then imposed a bifurcated sentence of forty-five years, consisting of thirty-five years of initial confinement and ten years of extended supervision.

¶22 Although the trial court did not treat Trattner's age as mandating a shorter sentence, it was not required to do so. *See Stenzel*, 276 Wis. 2d 224, ¶17. The trial court provided a full and complete explanation for why it imposed the sentence it did. It did not have to explain why a shorter sentence was not imposed.

By the Court.—Judgment and order affirmed.

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

