COURT OF APPEALS
DECISION
DATED AND FILED

February 24, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP948-CR **Cir. Ct. No. 2006CF2847**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ISREAL ALVARADO-REYES,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed*.

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Isreal Alvarado-Reyes pled guilty to one count of first-degree reckless homicide. *See* WIS. STAT. § 940.02(1) (2005-06).[1] The trial

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

court imposed a bifurcated sentence of seventeen years of initial confinement and eight years of extended supervision. Alvarado-Reyes filed a *pro se* motion to modify sentence, relying on WIS. STAT. § 973.13. The trial court denied the motion. Alvarado-Reyes appeals. We affirm.

¶2 On appeal, Alvarado-Reyes contends that the trial court did not advise him, during sentencing, that he was being sentenced for a Class B felony or that the maximum sentence was sixty years. Alvarado-Reyes argues that, because of that failing, the initial confinement component of the sentence should be modified from seventeen years to ten years.

¶3 WISCONSIN STAT. § 973.13 states that "[i]n any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings." First-degree reckless homicide is a Class B felony. WIS. STAT. § 940.02(1). The maximum penalty for a Class B felony is "imprisonment not to exceed 60 years." WIS. STAT. § 939.50(3)(b). The maximum term of confinement in prison for a Class B felony is forty years. WIS. STAT. § 973.01(2)(b)1. Alvarado-Reyes's twenty-five year sentence is less than the sixty-year maximum penalty, and the seventeen-year term of initial confinement is less than the forty-year maximum length of initial confinement. By its plain language, § 973.13 provides relief only when the imposed sentence exceeds the statutory maximum. Because the sentence imposed on Alvarado-Reyes did not exceed the statutory maximum, § 973.13 does not support any modification of Alvarado-Reyes's sentence.

¶4 The essence of Alvarado-Reyes's argument, stated several times in various ways, is that a trial court must inform a defendant of the maximum penalty

before imposing sentence. Alvarado-Reyes states that if he had been told at sentencing that he faced a maximum sentence of sixty years, "he would've attempted to negotiate a plea for a lesser exposure." Alvarado-Reyes's argument is directed to the wrong point in the process. Before accepting a guilty plea, a trial court must tell a defendant of the potential punishment if convicted and ascertain that the defendant understands it. WIS. STAT. § 971.08(1)(a). At the plea hearing, the trial court properly advised Alvarado-Reyes that he faced a possible sixty-year sentence and Alvarado-Reyes told the court that he understood.[2] The record shows that Alvarado-Reyes was aware of the maximum sentence before entering his guilty plea. There is no requirement that the information be repeated prior to the imposition of sentence.

¶5 To the extent that Alvarado-Reyes is raising a general challenge to the sentence imposed by the trial court, we are not persuaded.[3] The record shows that the court properly exercised its sentencing discretion. Three primary sentencing factors should guide a trial court's sentencing decision—the nature of the offense, the character of the defendant, and society's interest in punishment, deterrence and rehabilitation. *See* ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). Appellate review of sentencing is limited to determining if discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion."

[2] At both the plea hearing and sentencing, a Spanish-language interpreter appeared and interpreted the proceedings for Alvarado-Reyes. Additionally, the record contains a Spanish translation of the standard plea questionnaire/waiver of rights form.

[3] Like many *pro se* briefs, Alvarado-Reyes's submission is disjointed and his arguments are difficult to follow.

Id. When the exercise of discretion has been demonstrated, we follow "'a consistent and strong policy against interference with the discretion of the trial court in passing sentence.'" ***Id.***, ¶18 (citation omitted). "'"Sentencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.'" ***Id.*** (citation and brackets omitted). 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.'" ***Id.***, ¶23 (citation omitted).

¶6 "Circuit courts are required to specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Id.***, ¶40. Also, under truth-in-sentencing, the legislature has mandated that the court shall consider the protection of the public, the gravity of the offense, the rehabilitative needs of the defendant and other aggravating or mitigating factors. ***Id.***, ¶40 n.10.

¶7 In this case, the court considered the nature of the crime, particularly noting that Alvarado-Reyes was the person who introduced a gun into a confrontation outside of a tavern. The court acknowledged that Alvarado-Reyes may have felt threatened, but stated that Alvarado-Reyes could have walked away from the confrontation rather than getting a gun from his vehicle. The court considered the seriousness of the offense, noting that gunshots fired by Alvarado-Reyes killed one person and injured four others. The court considered the impact of the crime on the victim's family, including the victim's brother, a Milwaukee police officer who was one of the initial responders to the crime scene. The court

considered Alvarado-Reyes's character, as evidenced by his prior criminal record and his flight to Illinois after the shooting. The court also considered Alvarado-Reyes's history of employment. The court identified punishment and deterrence, both to Alvarado-Reyes and to others, as the primary objectives of the sentence.

¶8 The record shows that the court identified the various factors that it considered in fashioning its sentence. The court identified its sentencing objectives. Contrary to Alvarado-Reyes's primary argument, the court was not required to tell Alvarado-Reyes the maximum sentence prior to imposing sentence. The court did not erroneously exercise its sentencing discretion. Alvarado-Reyes faced a potential of sixty years of imprisonment, comprised of forty years of initial confinement and twenty years of extended supervision. A sentence is considered harsh or excessive "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." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Given the potential sentence facing Alvarado-Reyes and the overall circumstances of the crime, the sentence imposed is neither unusual nor disproportionate.

By the Court.—Order affirmed.

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