

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 2008

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. 2008AP1535-CR

Cir. Ct. No. 2007CF4742

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAWSON CARTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lawson Carter appeals from a judgment of conviction and a postconviction order denying sentence modification. The sole issue on appeal is whether the circuit court properly exercised its sentencing discretion. We affirm.

BACKGROUND

¶2 The relevant facts are few. Carter stabbed Rory Moore, with whom he was romantically involved, and Moore died from the wound. Carter told police that he and Moore quarreled, and Carter lost his temper when Moore threatened “to bust [Carter’s] mother-f*ing head.” After a preliminary hearing, the State charged Carter with first-degree reckless homicide while armed.

¶3 Pursuant to a plea bargain, Carter pled guilty to an amended charge of second-degree reckless injury while armed, and the State agreed to recommend “substantial confinement” as a disposition. The circuit court ordered a presentence investigation report. The author of the report recommended six and one-half-to-seven and one-half years of initial confinement followed by four-to-five years of extended supervision. Carter asked the circuit court to place him on probation. The circuit court imposed a fifteen-year term of imprisonment, bifurcated as ten years of initial confinement and five years of extended supervision. Carter filed a postconviction motion for sentence modification, which the circuit court denied. Carter appeals.

DISCUSSION

¶4 Sentencing lies within the sound discretion of the circuit court and our review is limited to determining if discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. “When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence.” *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 231, 688 N.W.2d 20, 23.

¶5 The circuit court must consider the primary sentencing factors of “the gravity of the offense, the character of the defendant, and the need to protect the public.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 606, 712 N.W.2d 76, 82. The circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *Id.*, 2006 WI App 49, ¶23, 289 Wis. 2d at 606–607, 712 N.W.2d at 82. The circuit court has discretion when imposing sentence to determine both the factors that it believes are relevant and the weight to assign to each relevant factor. *Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d at 237, 688 N.W.2d at 26. The circuit court need discuss only those factors relevant to the particular case. *Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d at 607, 712 N.W.2d at 82.

¶6 Additionally, the circuit court must “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.” *Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. The circuit court should impose “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.*, 2004 WI 42, ¶23, 270 Wis. 2d at 550–551, 678 N.W.2d at 204 (citation omitted).

¶7 In this case, the circuit court considered the three primary sentencing factors. The circuit court discussed the loss to the victim’s family as well as the absence of a justification for the murder and concluded that the offense was a serious one. The circuit court characterized Carter as attempting to minimize his responsibility for the offense. The circuit court placed greatest emphasis on public safety concerns, noting Carter’s prior record and his involvement with narcotics.

The circuit court additionally took into consideration Carter's failure to complete a term of probation imposed for an earlier offense.

¶8 The circuit court identified rehabilitation and punishment as the primary objectives of its sentence. The circuit court determined that Carter's involvement with narcotics reflected extensive treatment needs that should be addressed in a confined setting. Further, the circuit court concluded that Carter should be punished for taking a life. Accordingly, the circuit court rejected Carter's plea for probation, stating that probation "would unduly depreciate the serious nature of the offense."

¶9 Carter complains that the circuit court did not state "the specific reasons" for the sentence chosen. We disagree. The sentencing factors and objectives considered by the circuit court constitute the reasons for Carter's sentence. The circuit court is not required to state precisely why it imposed a fifteen-year term of imprisonment. See *Gallion*, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209 ("exercise of discretion does not lend itself to mathematical precision").

¶10 Carter additionally faults the circuit court for failing to explain why it deviated from the recommendation made by the author of the presentence investigation report. In fact, the circuit court had no obligation to give such an explanation. See *State v. Johnson*, 158 Wis. 2d 458, 469, 463 N.W.2d 352, 357 (Ct. App. 1990) (circuit court need not explain its decision to deviate from any sentencing recommendation). Rather, the circuit court must consider proper factors and impose a sentence to meet appropriate goals. See *Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d at 232, 688 N.W.2d at 24. The circuit court met those obligations here.

¶11 Moreover, the sentence selected is neither excessive nor unduly harsh. Carter faced a possible maximum prison sentence of thirty years. He received a sentence that is one-half that length. ““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.”” *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 651, 648 N.W.2d 507, 517 (citation and one set of brackets omitted). While Carter believes that a shorter sentence is warranted, “no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion.” *See State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 800, 661 N.W.2d 483, 490.

¶12 Carter last complains that the circuit court’s order denying his postconviction motion “did not add to an understanding of the facts underlying the sentencing court’s decision.” Our role is to “review a motion for sentence modification by determining whether the sentencing court erroneously exercised its discretion in sentencing the defendant.” *State v. Noll*, 2002 WI App 273, ¶4, 258 Wis. 2d 573, 577, 653 N.W.2d 895, 897. We are satisfied that the original sentencing proceeding reflected a proper exercise of discretion. We therefore reject Carter’s challenge to the denial of his postconviction motion.

By the Court.—Judgment and order affirmed.

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

