

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 11, 2012

Diane M. Fremgen
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. 2011AP2063-CR

Cir. Ct. No. 2010CF6135

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TONY CHARLES MADISON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed.*

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

¶1 PER CURIAM. Tony Charles Madison appeals a judgment convicting him of conspiracy to commit armed robbery with threat of force and an order denying his motion for postconviction relief. Madison argues that the circuit court misused its sentencing discretion. We affirm.

¶2 Madison was recruited by Lonell Mays to observe a bank that Mays was planning to rob. Madison agreed to relay information to Mays that would assist Mays in planning the robbery. Madison admitted to the police that he went to the bank on December 14, 2010, in furtherance of the plan. Madison pled guilty to conspiracy to commit armed robbery and was sentenced to five years of imprisonment, with two years of initial confinement and three years of extended supervision.

¶3 Our standard of review is well settled. Sentencing lies within the circuit court's discretion, and appellate review is limited to considering whether discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. The circuit court should specify the objectives of the sentence during the sentencing hearing, which include, but are not limited to “the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. Additionally, the circuit court must explain the link between the sentencing objectives and the sentence imposed. *Id.*, 2004 WI 42, ¶46, 270 Wis. 2d at 560, 678 N.W.2d at 208. The circuit court is not required, however, to explain a sentence with mathematical precision. *Id.*, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209. Rather, we expect “an explanation for the general range of the sentence imposed.” *Ibid.*

¶4 Madison first argues that the circuit court misused its sentencing discretion because it placed too much weight on his prior record and did not consider mitigating factors that supported a lighter sentence. We reject this argument. Before it imposed sentence, the circuit court heard extensive argument from Madison's attorney about the mitigating circumstances in this case, including the fact that Madison did not organize or plan the crime, he did not have a weapon

and he was recruited into the scheme when it was already well underway. Madison's attorney also pointed out that Madison had given a full confession to police and taken responsibility for his actions. In framing its sentence, the circuit court considered the facts of this case in light of factors appropriate to a sentencing decision, including the gravity of the offense, the need to protect the public and Madison's character. While the circuit court placed particular emphasis on the fact that Madison had two prior felony convictions and was on supervision when he committed this crime, the circuit court also considered the mitigating factors discussed by Madison's attorney and acknowledged that Madison had generally been doing well on supervision prior to this offense and was taking care of his family. After weighing all considerations, however, the circuit court decided that prison time was necessary due to Madison's prior record and the fact that he was on supervision when he committed this crime. The circuit court made a reasonable decision based on the facts of this case and the applicable law, and explained its decision on the record. The circuit court properly exercised its sentencing discretion.

¶5 Madison next argues that his equal protection rights were violated because he was sentenced to a longer sentence than Mays, who was more culpable. Mays was sentenced to six years of imprisonment, with four years of initial confinement and two years of extended supervision, imposed and stayed in favor of four years of probation with twelve months in jail as a condition.

¶6 "Equality of treatment under the Fourteenth amendment in respect to sentencing ... requires substantially the same sentence for persons having substantially the same case histories." *Jung v. State*, 32 Wis. 2d 541, 553, 145 N.W.2d 684, 690 (1966). Madison's argument fails because he and Mays do not have substantially the same case histories. It is undisputed that Madison is less

culpable than Mays with regard to this crime because Mays planned the crime. Unlike Mays, however, Madison already had two felony convictions and was on extended supervision when he decided to again break the law. Mays was given a lighter sentence because he did not have a criminal history. In the event Mays' probation is revoked, Mays will serve a more lengthy prison term in keeping with his greater culpability. Madison's sentence did not violate equal protection because the disparate sentences were based on the particular circumstances of each defendant.

¶7 Madison next argues that the circuit court did not explain why it denied him eligibility for the Early Release and Challenge Incarceration Programs and it did not explain the reasons for the length of either aspect of his bifurcated sentence. The circuit court specifically stated at sentencing that it would unduly depreciate the seriousness of Madison's conduct if he were permitted to enter an early release program because he committed this offense while on supervision. Moreover, the circuit court did not have an obligation to state exactly why the objectives it considered translated into a specific number of years of imprisonment. See *State v. Fisher*, 2005 WI App 175, ¶¶21–22, 285 Wis. 2d 433, 447–448, 702 N.W.2d 56, 63. We reject these arguments.

¶8 Madison next contends that the circuit court's sentence was unduly harsh and excessive. "A sentence is unduly harsh when it 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.'" *State v. Prineas*, 2009 WI App 28, ¶29, 316 Wis. 2d 414, 436, 766 N.W.2d 206, 217 (citation omitted). Madison conspired to commit armed bank robbery. In light of his actions, his prior record, and the fact that he was on supervision when he committed this crime, Madison's

two-year term of initial confinement and his three-year term of extended supervision was not excessive.

By the Court.—Judgment and order affirmed.

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

