COURT OF APPEALS
DECISION
DATED AND FILED

July 3, 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. 2011AP2569-CR **Cir. Ct. No. 2009CF850**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN O. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 GUNDRUM, J. John O. Williams appeals from a judgment of conviction and an order denying his motion for postconviction relief. Williams argues that his sentence was unduly harsh and excessive and, therefore, he should be resentenced. We disagree and affirm.

BACKGROUND

¶2 Following a jury trial, Williams was convicted of five felony counts, four for bail jumping and one for substantial battery. On two of the bail jumping counts, Counts 1 and 5, the court sentenced Williams to the maximum amount of imprisonment allowed on each count, three years of initial confinement followed by three years of extended supervision, consecutive. The court ordered probation on the other three counts.

¶3 Williams filed a postconviction motion seeking a reduction in his sentences on Counts 1 and 5, arguing that the imposition of consecutive maximum sentences on those two counts "shocks the public sentiment and constitutes an abuse of discretion." His motion contended that these counts did not merit maximum sentences and that the sentences violated the longstanding requirement that a court impose "the minimum amount of custody or confinement required."

¶4 The trial court denied Williams' motion after a hearing, and this appeal followed. Additional facts will be addressed as necessary in our discussion.

DISCUSSION

¶5 A trial court's exercise of its sentencing discretion is presumptively reasonable and our review is limited to determining whether a court erroneously exercised its discretion. ***State v. Harris***, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. At sentencing, a court must consider the gravity of the offense, the character of the defendant, and the need to protect the public. ***Id.***, ¶28. The weight a court gives to each of these factors is left to its discretion. ***Id.*** A defendant challenging a sentence as an erroneous exercise of discretion on the

grounds that it was unduly harsh must show that the sentence was "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).

¶6 On appeal, Williams renews his argument that his sentences were unduly harsh and excessive and failed to provide 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" in accordance with ***State v. Gallion***, 2004 WI 42, ¶44, 270 Wis. 2d 535, 678 N.W.2d 197 (quoting ***McCleary v. State***, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971)).

¶7 With regard to Count 1, Williams contends imposition of the maximum penalty was "extremely disproportionate to the offense" because "[a] violation of a no contact requirement is a relatively minor way of violating the terms of bond" and his violation "involved a period of seven days, rather than a more substantial period of time." As such, Williams argues that his violation "does not qualify as an aggravated case, as it involved relatively minor conduct."

¶8 With regard to Count 5, which relates to Williams "physically assaulting or verbally abusing" the same victim on December 5, 2009, in violation of his bond, Williams argues that this conviction also "do[es] not merit the maximum penalty." He reasons that even though he does have "a number of prior convictions ... the Presentence Investigation only reveals a battery conviction from 2007," and "[t]hus, [he] is not a defendant with a long history of convictions for similar behavior." Williams further contends that the maximum sentence was not warranted because, while the victim testified at trial that Williams "knocked her

unconscious and caused other injuries ... includ[ing] a torn lip and black and blue marks[,] ... this was not a case involving extreme injury such as a broken bone or a permanent impairment." Williams' arguments on both counts fail to persuade.

¶9 In imposing Williams' sentence, the trial court properly considered the seriousness of the offenses, Williams' character, including his rehabilitative needs, and the need to protect the public. Looking to the seriousness of the offenses, the court stated at sentencing that "[t]he injuries that you inflicted upon this woman are unacceptable." The court further noted that the disparity in size between Williams and the victim was a concern because "she had no chance."

¶10 The trial court explained at the postconviction hearing[1] that the purpose of the no contact order was to protect the victim from physical harm from Williams, the very type of harm, the court noted, that he in fact ended up inflicting on her just three weeks after the time period related to his violation of Count 1. The court noted that it did not view Williams' violation of the no contact order with regard to Count 1 as minor because "later on the exact reason for having that no contact was violated because he battered her" and Williams' violation of the no contact order told the court that Williams "is unwilling to follow a court order."

¶11 At sentencing, the trial court stated that, having reviewed the presentence investigation report, it viewed Williams as blaming others for his circumstances and "deny[ing] most of what happened here [] [e]ven with the physical evidence on this woman." At the postconviction hearing, the court said it

[1] A trial court has an additional opportunity at a postconviction hearing to explain its sentence. *See* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). Here, the same judge presided over the trial, the sentencing and the postconviction hearing.

considered Williams' lack of acceptance of responsibility to be an aggravating factor because "having sat through the jury trial I didn't think there was any doubt that the circumstances as they were testified to by the victim in this matter occurred." Part of the "circumstances" the victim testified to were that Williams physically assaulted her on December 5, 2009, in a manner which caused her to lose consciousness more than once, tore open her lip, and left black and blue marks on her "from head to toe," including around one of her eyes. Related to the "unacceptable" injuries the court referenced at sentencing, the presentence investigation report details that, after the assault, the victim began experiencing "migraine type headaches," developed scarring on her lip, and lost vision in her right eye.

¶12 While the foregoing also relates to Williams' character, more directly addressing this factor, the trial court stated at sentencing that Williams' criminal record "speaks long term" of his character, emphasizing that Williams has been in "criminal trouble" since 1984, including "batteries, possession of controlled substances, damage to property, disorderly conduct, burglary tools, resisting, [and] obstructing." The court said it also viewed Williams as a danger because of a past relationship of his involving violence. The court expressed its concern that Williams "continue[s] with the alcohol, with the violence,"[2] and that Williams' failure to accept responsibility "makes [Williams] pretty dangerous."

[2] One of the bail jumping counts Williams was convicted of related to his "possessing or consuming alcohol on or between December 5 to December 6, 2009," a timeframe that related to Williams' attack on the victim. The victim and the two officers who interacted with Williams after the attack provided testimony at trial that Williams had been drinking prior to the attack. Williams' counsel also indicated to the court at sentencing that "it looks like [Williams] received a prison sentence with some sort of supervision in '06 for possession of controlled substance due to alcohol and drug issues." The presentence investigation report further identified alcohol concerns related to Williams.

¶13 Looking at Williams' past history of violence and his present convictions involving violence, the court determined that Williams needed treatment before the public would be safe from him. The court stated it did not have much confidence, however, that Williams would change at his age, forty-five. Considering the offenses before it, as well as Williams' prior record, the court stated Williams has a "long[-]term" problem and that it could not "help but think that this is going to be a long-term solution as well." The court said Williams needed to be removed from the community for "a fairly significant period of time" to protect the public, "especially any woman that would date [Williams]."

¶14 Thus, in sentencing Williams, the trial court appropriately considered the seriousness of the offenses, Williams' character, and the need to protect the public. Moreover, as the court noted at the postconviction hearing, it ordered probation for Williams on his other three felony convictions. As a result, the court observed, the six years of initial confinement and six years of extended supervision Williams received on Counts 1 and 5 collectively was substantially less than what the court could have ordered Williams to serve if it also had ordered confinement on those other three convictions.

¶15 In light of the foregoing, we believe the trial court properly exercised its discretion in sentencing Williams as it did. We are unconvinced that the sentences imposed were excessive or unduly harsh.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.