

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2014

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. 2013AP2625-CR

Cir. Ct. No. 2012CF113

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TREVOR JOSEPH OLSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marinette County: JAMES A. MORRISON, Judge. *Affirmed.*

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Trevor Olsen appeals a judgment of conviction for possession of heroin with intent to deliver, as a party to a crime, and an order denying a postconviction motion seeking sentence modification. Olsen makes a variety of sentencing arguments on appeal. We reject his arguments and affirm.

¶2 In exchange for Olsen’s no contest plea to the heroin charge, another charge of theft was dismissed and read in. Another case in which Olsen was charged with felony bail jumping and three misdemeanors was also dismissed and read in for purposes of sentencing in the present case. The court imposed a sentence consisting of seven and one-half years’ initial confinement and five years’ extended supervision. The court also allowed Olsen to participate in the substance abuse program (formerly called the earned release program), but only after serving five years of his sentence.

¶3 Olsen subsequently sought postconviction relief seeking to modify his sentence. Olsen argued the sentence was based upon improper factors, and “the Court’s remarks at sentencing indicated that the court did not understand its role and was potentially influenced by public perception.” He also claimed the sentence was “unduly harsh and unconscionable.” The court denied the motion and Olsen now appeals.

¶4 Sentencing is reviewed only for an erroneous exercise of discretion. *State v. Spears*, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999). There is a strong public policy against interference with the sentencing discretion of the trial court. Sentences are afforded the presumption that the trial court acted reasonably. *Id.*

¶5 Olsen argues the court erroneously exercised its sentencing discretion “when it sentenced Mr. Olsen to the maximum sentence without showing how that sentence accomplished the sentencing objectives enumerated.” However, the record belies his argument.

¶6 Here, the circuit court considered the proper sentencing factors. The court concluded the paramount factor was the need to protect the public, which “trump[ed] everything.” The court stated it “c[ould] not emphasize enough how

grave this offense is” and characterized heroin as a “scourge.” The court found Olsen to be “at the center of the commercial heroin trade in this community,” and discussed how Olsen’s heroin crimes were “responsible for all of [these] spin-off crimes.” The court noted that Olsen’s other crimes were extensive and included receiving stolen property; felony bail jumping as a repeater; disorderly conduct as a repeater; and criminal trespass as a repeater. All told, Olsen could have received well over twenty-six more years of prison, had those charges not been dismissed.

¶7 The court’s remarks also made clear that Olsen’s crimes were anything but victimless. Rather, people in the community were addicted to heroin because of Olsen. The court stated Olsen was responsible for causing “deaths and suffering and agony.” The court further explained that people lost their property and their sense of security in their houses and vehicles because of Olsen’s crimes.

¶8 The court also noted that Olsen was found with \$1,000 of drug money in his pocket, but he owed \$10,000 in child support, despite representing to the court that his son was the most important person in the world. The court also found very compelling that Olsen had a history of undesirable behavior and was not a productive member of society. The court found Olsen’s rehabilitative needs could only be served in a prison setting, and rejected the recommendation of probation as “absurd” and “almost obscene.”

¶9 Olsen attempts to characterize the court’s intentions as improper, latching onto the court’s remark that its responsibility was “to apply the law as a representative of the community.” Olsen insists the court assumed the role of the prosecutor, or was overly swayed by public perception, partisan interests, and fear of criticism.

¶10 Olsen mischaracterizes the court's remark. The court was not ignoring the law or inserting itself into the role of prosecutor. The court was simply foreshadowing later remarks that it considered the protection of the community to be the paramount sentencing consideration in this case.

¶11 Taken in context, the court's remarks were entirely proper. As the court explained in the postconviction motion hearing, "I made it clear on the record that I thought the sentence I was giving Mr. Olsen was not only in society's best interest, but in his best interest because I feared that, if he did not get effective treatment, heroin would kill him."

¶12 Olsen also challenges the court's withholding for five years his eligibility for the substance abuse program. The court reasoned that "successful heroin intervention takes a substantial period of time." The court stated Olsen needed to get his addiction problem under control, by doing "everything the Department of Corrections demands of [him]," thereby making it "entirely up to [Olsen]" as to whether he could "get out onto the streets" earlier. In addition, the timeframe was imposed not only to give Olsen adequate time to rehabilitate himself in prison, but also to protect the public from his crimes and deter others from committing the same kinds of heroin crimes. The court's sentencing rationale justified its eligibility decision, and was an appropriate exercise of sentencing discretion.

¶13 We also specifically reject Olsen's contention that his sentence was overly harsh or excessive. Olsen's sentence was within the permissible range established by statute. Moreover, the court provided Olsen the opportunity to reduce his sentence if he complied with the substance abuse program and other mandates imposed by the department of corrections. The maximum sentence

imposed was justified in this case and neither shocks public sentiment nor is disproportionate to the offenses committed. *See State v. Taylor*, 2006 WI 22, ¶¶16, 19, 289 Wis. 2d 34, 710 N.W.2d 466.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

