COURT OF APPEALS
DECISION
DATED AND RELEASED

January 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 95-1230-CR
95-1231-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

NORMAN EARL RHODES,

Defendant-Appellant.

APPEAL from judgments and orders of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Norman Earl Rhodes appeals from judgments of conviction, following his guilty pleas, for first-degree recklessly endangering safety while armed and two counts of armed robbery, party to a crime, contrary to §§ 941.30(1), 939.63, 943.32(1)(b) & (2), and 939.05, STATS. Rhodes also appeals from orders denying his motions for postconviction relief, arguing that the trial court erred in denying his motion to withdraw his guilty pleas without

having held an evidentiary hearing. Rhodes also complains that his sentences were unduly harsh. We reject his arguments and affirm.

Rhodes argues that the guilty plea colloquy was insufficient to satisfy the requirements of §971.08(1), STATS., that guilty pleas be voluntarily and knowingly made.[1] Rhodes filed a motion after sentencing to withdraw his guilty pleas along with an affidavit stating that at the time he pled guilty he did not understand nor did his attorney explain the constitutional rights he was waiving or the elements of the charges. The trial court denied his motion without a hearing.

A defendant challenging the voluntary and knowing basis for a guilty plea bears the initial burden of making a prima facie showing that the plea was not accepted in compliance with § 971.08, STATS. ***State v. Moederndorfer***, 141 Wis.2d 823, 830, 416 N.W.2d 627, 630-631 (Ct. App. 1987). We independently review the trial court's determination of whether the defendant made the requisite prima facie showing. ***Id.*** at 831, 416 N.W.2d at 631.

During the brief plea colloquy, the trial court relied on the guilty plea questionnaire and waiver of rights form and questioned Rhodes's attorney regarding her discussions with Rhodes. According to the transcript, Rhodes told the court that he acknowledged by his signature that he read and had read to him the three guilty plea questionnaire and waiver of rights forms, which explained the constitutional rights that he was waiving. He also affirmed by his signature that his attorney explained the contents of the forms, which recited that Rhodes: (1) read and had read to him the complaints; (2) understood what he was charged with; (3) understood the elements of the charges; and

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[1] Section 971.08(1), STATS., in relevant part states:

> Before the court accepts a plea of guilty or no contest, it shall do all of the following:
>
> (a) Address the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted.

(4) understood the potential penalties he faced. Additionally, the court verified that Rhodes understood the potential penalties applicable to each of the charges to which Rhodes wanted to plead guilty and that no one had promised Rhodes anything or threatened him in exchange for his pleas. The forms and the colloquy sufficiently established that the plea hearing complied with § 971.08, STATS. *See* ***Moederndorfer***, 141 Wis.2d at 827-832, 416 N.W.2d at 629-631 (use of guilty plea waiver form in combination with abbreviated guilty plea colloquy is sufficient under § 971.08, STATS.).

Rhodes also argues that the sentences imposed by the trial court were unduly harsh. He claims the trial court "gave too much weight to the gravity of the offense[s] and the need for public protection."

Rhodes received a seven-year prison sentence for first-degree reckless endangerment while armed and a nine-year prison sentence for the first count of armed robbery, consecutive to the seven-year sentence. On the second count of armed robbery, Rhodes received an eighteen-year stayed sentence with nine years probation, consecutive to the other sentences.

Our review of a sentence imposed by a trial court is limited to a two-step inquiry. ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984). First, we determine whether the trial court properly exercised its discretion in imposing the sentence. If so, we then consider whether that discretion was erroneously exercised due to the imposition of an excessive sentence. ***Id.*** There is a strong policy against an appellate court interfering with a trial court's sentencing determination and, indeed, an appellate court must presume that the trial court acted reasonably. ***State v. Thompson***, 146 Wis. 2d 554, 564, 431 N.W.2d 716, 720 (Ct. App. 1988).

The sentencing court must consider three primary factors: 1) the gravity of the offense, 2) the character of the offender and 3) the need to protect the public. ***State v. Harris***, 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation results; the viciousness or aggravated nature of the defendant's

crime; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the needs and rights of the public; and, the length of the defendant's pretrial detention. ***State v. Jones***, 151 Wis.2d 488, 495-496, 444 N.W.2d 760, 763-764 (Ct. App. 1989). The weight to be given to each of the factors is within the trial court's discretion. ***State v. Curbello-Rodriguez***, 119 Wis.2d 414, 434, 351 N.W.2d 758, 768 (Ct. App. 1984).

The record establishes that the trial court did not erroneously exercise its sentencing discretion. The trial court considered the gravity of Rhodes's offenses and the need to protect the public, noting that on the reckless endangerment charge it was simply by sheer luck that the victim had not been shot. The trial court also noted that the two armed robbery counts consisted of a dwelling invasion that occurred during broad daylight and involved a Tech 9-type assault pistol. The trial court also noted numerous things about Rhodes's character, including the fact that he was nineteen years old at the time he committed these crimes and that Rhodes had a substantial criminal record and a lengthy juvenile record, which the trial court noted in its postconviction order, "underscored his inability to adjust or rehabilitate himself." Additionally, the trial court noted that the legislature had since doubled the potential penalties for the two armed robbery counts, effective after Rhodes committed his crimes. *See* 1993 Wis. Act 194, §§ 9 & 9359 (increasing the penalty for Class B felonies from twenty to forty years, effective Aug. 21, 1994 (§ 991.11, STATS.)). The trial court also relied on the testimony and written impact statements from the victims. Finally, as mitigating factors, the trial court noted that Rhodes was not the actor who had the gun during the armed robberies and he had admitted responsibility for the reckless endangerment charge.

We also reject Rhodes's argument that the sentence he received was unduly harsh and excessive. When a defendant argues that his or her sentence is unduly harsh or excessive, we will find an erroneous exercise of discretion "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, 461 (1975).

Rhodes faced potential maximum prison sentences on these charges of forty-nine years; he received a sixteen-year prison sentence. Rhodes would have faced an additional twenty years if the State had not agreed to the dismissal of a burglary charge against him. The sentences imposed were not "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***, 70 Wis. 2d at 185, 233 N.W.2d at 461. *See also* ***State v. Daniels***, 117 Wis.2d 9, 22, 343 N.W.2d 411, 417-418 (Ct. App. 1983) ("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."). Therefore, we affirm the judgments and orders denying Rhodes's postconviction motions.

By the Court. – Judgments and orders affirmed.

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