

**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.

No. 95-1712-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

EDWARD L. CARTER,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Edward Carter appeals a judgment sentencing him to sixteen years in prison for theft and an order denying his postconviction motions to withdraw his guilty plea, reduce the charge and modify the sentence. He argues that an inadequate factual basis existed for his guilty plea, the sentence was excessive and constituted an erroneous exercise of discretion,

and that the trial court improperly failed to consider the sentencing guidelines. We reject these arguments and affirm the judgment and order.

Pursuant to a plea agreement, Carter pleaded guilty to one count of theft of a car valued at more than \$2500 as a habitual offender. He contends that no factual basis exists in the record to demonstrate that an eleven-year-old Cadillac is worth more than \$2500. We disagree. Where the trial court has determined that there was sufficient factual basis for acceptance of plea, we will not upset that determination unless it is clearly erroneous. *State v. Harrington*, 181 Wis.2d 985, 989, 512 N.W.2d 261, 263 (Ct. App. 1994). The criminal complaint states that the victim estimated the car's value at \$4500. The present value of personal property may be established by the non-expert opinion of its owner. *Trible v. Tower Ins. Co.*, 43 Wis.2d 172, 187, 168 N.W.2d 148, 156 (1969). The owner's estimate recited in the complaint constitutes a sufficient factual basis for the court to make certain that Carter pleaded guilty to a crime he committed. See *State v. Peterson*, 54 Wis.2d 370, 385, 195 N.W.2d 837, 847 (1972).

The trial court properly exercised its sentencing discretion when it imposed the maximum sixteen-year sentence to run consecutive to Carter's other sentences. There is a strong public policy against interference with the circuit court's sentencing discretion, requiring a defendant to overcome a presumption of reasonableness by showing some unreasonable or unjustifiable basis for the sentence in the record. See *State v. Johnson*, 158 Wis.2d 458, 463, 463 N.W.2d 352, 355 (Ct. App. 1990). The trial court has discretion to weigh the various aggravating and mitigating factors to determine an appropriate disposition. *State v. Hamm*, 146 Wis.2d 130, 154, 430 N.W.2d 584, 595 (Ct. App. 1988).

The trial court noted that, although the present crime is comparatively not serious, it is but the latest in a long series of crimes committed by Carter. Carter's record includes a variety of violent and life threatening crimes, prison escapes and armed robberies. Some of these crimes, including the present one, were committed while Carter was a fugitive. The trial court found there was no reasonable chance Carter could be rehabilitated. The court appropriately noted that the maximum repeater sentences were created expressly for career criminals like Carter. Although the trial court relied primarily on Carter's character, we reject Carter's argument that the court gave

too much weight to this sentencing factor. The weight to be given each factor is a determination particularly within the wide discretion of the sentencing court. See *Anderson v. State*, 76 Wis.2d 361, 364, 251 N.W.2d 768, 770 (1977).

Finally, the trial court's failure to expressly consider the sentencing guidelines does not entitle Carter to any relief. Section 973.012, STATS., prohibits a defendant from basing an appeal on the sentencing court's failure to consider the sentencing guidelines. *State v. Elam*, 195 Wis.2d 683, 538 N.W.2d 249 (1995).

By the Court.—Judgment and order affirmed.

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