

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 27, 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. 95-2436-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER PHILLIP RIES,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

SCHUDSON, J.¹ Christopher Ries appeals from the judgment of conviction for criminal trespass to a dwelling. Ries also appeals from the order denying his motion for postconviction relief. He seeks a re-sentencing, arguing that the trial court “abridged [his] right to be sentenced on the basis of true and correct information.” This court affirms.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

Ries was prosecuted for battery and criminal trespass to a dwelling stemming from an altercation in which he and Tammy Eastman were involved when Ries entered the back door of Eastman's apartment after she had refused him entry at the front door. The jury acquitted Ries of the battery charge but convicted him of criminal trespass to a dwelling. Immediately following the trial, the trial court sentenced Ries to five months incarceration with release privileges for work and education.

Ries pursued a postconviction motion challenging the sentence. He contended, as he does on appeal, that the trial court violated his right to be sentenced on the basis of true and correct information by failing to consider the "history of the relationship," which included Ries's repeated efforts to move away from Eastman, and his need to seek harassment injunctions against her.

The supreme court has explained:

Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. We recognize a "strong public policy against interference with the sentencing discretion of the trial court and sentences are afforded the presumption that the trial court acted reasonably." This court is reluctant to interfere with a trial court's sentence because the trial court has a great advantage in considering the relevant factors and the demeanor of the defendant. The defendant must show some unreasonable or unjustifiable basis in the record for the sentence imposed.

The trial court must articulate the basis for the sentence imposed on the facts of record. There should be evidence in the record that discretion was in fact exercised.

The primary factors the trial court must consider in imposing sentence are: (1) the gravity of the offense, (2) the character and rehabilitative needs of the

offender, and (3) the need for protection of the public. As part of these primary facts the trial court may consider: the vicious and aggravated nature of the crime; the past record of criminal offenses; any history of undesirable behavior patterns; the defendant's personality, character and social traits; the results of a presentence investigation; 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, and cooperativeness; the defendant's need for rehabilitative control; the right of the public; and the length of pretrial detention.

State v. Echols, 175 Wis.2d 653, 681-682, 499 N.W.2d 631, 640-641 (citations omitted), *cert. denied*, 114 S. Ct. 246 (1993).

The record of Ries's sentencing reflects the trial court's consideration of the required criteria and articulation of the basis for Ries's sentence. This court need not detail the trial court's compliance because Ries does not argue that the trial court failed to consider the required criteria. Indeed, although Ries contends that the trial court "abridged [his] right to be sentenced on the basis of true and correct information," he does not maintain that any of the information presented to the trial court was untrue or inaccurate. Rather, he argues that the information was incomplete.

"The responsibility of the sentencing court is to acquire full knowledge of the character and behavior pattern of the convicted defendant before imposing sentence." *Elias v. State*, 93 Wis.2d 278, 285, 286 N.W.2d 559, 562 (1980). Ries points out that, at sentencing, no one addressed the history of his relationship with Eastman. At the postconviction motion hearing, however, the trial judge noted that he was aware of the "turbulent relationship," but stated, "I don't think that that mitigates the criminal trespass that took place"

Ries argues that "[t]he trial court's absolute refusal to consider the information proffered through the postconviction motion raises serious questions about whether the three traditional sentencing factors have ever been meaningfully considered in this case." Ries's interpretation is belied by the

record. The trial court did not refuse to consider the information. The trial court had heard testimony about the history of the relationship during the trial including Ries's references to prior problems with Eastman and the fact that he "filed for [a] domestic violence restraining order." The trial court was apprised of additional information at the postconviction hearing. The trial court concluded, however, that the turbulent history of the relationship did not mitigate and, accordingly, the trial court gave greater emphasis to other sentencing criteria.

The weight to be given each of the sentencing factors is fully within the discretion of the sentencing court. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). At the sentencing in this case, the trial court referred to the statements of counsel, Ries, Ries's father, Eastman, and to the trial testimony. The trial court provided a well-reasoned explanation for emphasizing the nature and seriousness of the offense, Ries's criminal record, the need for punishment, and the need for community protection. At the postconviction motion hearing, the trial court also commented that it "looked at the fact that this was a situation where the parties did in fact have a relationship and it was a turbulent relationship, and that was something that was considered at the sentencing." Ries has offered nothing to establish that the trial court abridged his right to be sentenced based on true and accurate information.

By the Court. – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.