

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 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(1), 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. 96-2129-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHELLE L. DEAN,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Rusk County:
JAMES C. EATON, Judge. *Affirmed.*

CANE, P.J. Michelle Dean appeals a portion of a judgment requiring her to serve sixty days in jail as a condition of probation for the offense of causing bodily harm to another by negligent use of a vehicle, contrary to § 346.62(3), STATS. Dean contends the sentencing court failed to reasonably exercise its discretion when imposing confinement in jail as a condition of probation. Because this court is satisfied the court reasonably exercised its sentencing discretion, the judgment is affirmed.

The offense relates to Dean leaving a party where she had been drinking and then striking another vehicle head on with her car after she fell asleep while driving. Dean's blood alcohol content tested .095%. The

occupants of the other car were seriously injured. Dean pled guilty to the charge of causing bodily harm to another by negligent use of a vehicle and at sentencing presented evidence that she had no prior criminal record, was a very good student in high school and had earned an associate degree after high school. She was employed with the intention of later continuing her college career. She expressed remorse, and was cooperative with the authorities.

Dean contends that the trial court imposed jail time as a condition of probation solely concerning the rights of the public and ignored the remaining factors outlined in *Williams v. State*, 79 Wis.2d 235, 255 N.W.2d 504 (1977), thereby failing to properly exercise its discretion at sentencing. This court is not persuaded.

Sentencing is a function of trial court discretion. *State v. Harris*, 119 Wis.2d 612, 622, 350 N.W.2d 633, 638 (1984). Appellate courts are reluctant to interfere with a trial court's sentence because it has a great advantage in considering the relevant factors and the demeanor of the defendant. *Id.* There is a presumption that a trial court acted reasonably when sentencing. *Id.* Thus, to demonstrate an erroneous exercise of sentencing discretion, the defendant must show some unreasonable or unjustifiable basis in the record for the sentence imposed. *State v. Echols*, 175 Wis.2d 653, 681-82, 499 N.W.2d 631, 640 (1993).

Here, the trial court was concerned with the serious nature of the offense where not only serious injury occurred, but occupants of both cars could have been killed because of Dean's continuing to drive after knowing that she was tired and impaired from consuming alcohol. The trial court repeatedly stressed that it was only luck that no one was killed in the accident caused by Dean. The trial court also considered the impact of Dean's misconduct on the victims as set out in their letter to the court for sentencing purposes. The trial court understood Dean's prior reluctance to make any statements to the victims because of the pending civil lawsuit. This court is satisfied after reviewing the transcript of the sentencing proceedings that the trial court relied on a justifiable basis for its decision and therefore reasonably exercised its sentencing discretion. The judgment is affirmed.

By the Court. – Judgment affirmed.

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