COURT OF APPEALS DECISION DATED AND RELEASED

December 17, 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. 96-2196-CR

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

State of Wisconsin,

Plaintiff-Respondent,

v.

Hiram Johnson,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed*.

WEDEMEYER, P.J.[1] Hiram Johnson appeals from a judgment entered after he pled guilty to operating a motor vehicle while intoxicated, third offense, contrary to §§ 346.63(1)(a) and 346.65(2), STATS. He also appeals from a postconviction order denying his request for sentence modification. He claims that the trial court erroneously exercised its sentencing discretion. Because the trial court did not erroneously exercise its sentencing discretion, this court affirms.

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

I. BACKGROUND

Johnson entered a guilty plea to OWI, third offense. The trial court sentenced him to nine months in the House of Correction, along with a $1,000 fine, plus costs and a thirty-six-month revocation of driving privileges. Judgment was entered. Johnson objected to the nine-month jail term. He filed a motion seeking sentence modification, which was denied. He now appeals.

II. DISCUSSION

Our review is limited to a two-step inquiry. This court must first determine whether the trial court properly exercised its discretion in imposing the sentence. If so, this court then will consider whether that discretion was misused by imposing an excessive sentence. ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984).

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. ***State v. Echols***, 175 Wis.2d 653, 682, 499 N.W.2d 631, 640, *cert. denied*, 510 U.S. 889 (1993).

Johnson claims that the trial court erroneously exercised its discretion when it imposed the nine-month jail term. He claims that the trial court imposed this sentence without considering "extraordinary circumstances" present in his case. These circumstances are that he has medical needs and cares for his elderly parents. Because of these factors, he claims the trial court should have imposed a lesser sentence. This court is not persuaded by Johnson's argument.

The record demonstrates that Johnson presented these factors to the trial court. Although the trial court did not specifically discuss these factors during the sentencing, it is clear that the trial court considered them because it granted Johnson work-release privileges to allow him to tend to his medical needs and to care for his parents. The record also indicates that the trial court addressed the three primary factors in imposing sentence. Accordingly, this

court cannot conclude that the trial court erroneously exercised its sentencing discretion.

Moreover, this court cannot conclude that a nine-month sentence for a third OWI offense is unduly harsh because it is 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 v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Johnson faced a possible maximum of one year in jail. The trial court imposed only nine months. Given the threat a third-time drunk driver poses to the public, a nine- month sentence is not excessive.

By the Court.—Judgment and order affirmed.

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