COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 7, 1997

NOTICE

No. 97-0853-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

PAUL EICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: DENNIS C. LUEBKE, Judge. *Affirmed.*

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

PER CURIAM. Paul Eick appeals his five-year sentence for bail jumping, having pleaded no contest to the charge. Eick's pretrial bond on child abuse charges barred him from going within 1,000 feet of a witness' residence; Eick pleaded no contest to visiting the house next door. After reviewing the presentence investigation report (PSI), the trial court gave Eick the maximum five-

year term for the charge. On appeal, Eick raises four basic arguments: (1) the sentence was excessive for a bail jumping conviction, a shock to the public conscience; (2) the PSI contained biased, inaccurate information, including false allegations on sexual misconduct, which Eick concludes must have had a major negative impact on the trial court's sentence; (3) the trial court secretly based the five-year sentence on the PSI's untruths on sexual misconduct, not on the bail jumping charge; and (4) trial counsel failed to provide Eick enough time to review the PSI before sentencing, thereby making it impossible for him to correct the PSI's inaccuracies at sentencing. We reject these arguments and therefore affirm Eick's five-year prison sentence.

We may conduct only a limited review of Eick's sentence. A trial court's sentence is discretionary, ***State v. Macemon***, 113 Wis.2d 662, 667-68, 335 N.W.2d 402, 405-06 (1983), and we will uphold it if it has a reasonable basis in the record. ***McCleary v. State***, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519-20 (1971). Relevant factors include the gravity of the offense, the protection of the public, the rehabilitative needs of the defendant, and the interests of deterrence. *See* ***State v. Sarabia***, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). Sentencing courts have discretion to determine the weight to give to each of the relevant factors. ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Eick did have the right to insist that the trial court sentence him on the basis of correct information, ***State v. Perez***, 170 Wis.2d 130, 141, 487 N.W.2d 630, 634 (Ct. App. 1992), and we must reverse sentences that shock the public conscience. *See* ***State v. Killory***, 73 Wis.2d 400, 408, 243 N.W.2d 475, 481 (1976). Nonetheless, if the legislature has authorized a range of punishment for a particular offense, a less than maximum sentence seemingly comports with the public conscience. *See* ***McCleary***, 49 Wis.2d at 290, 182 N.W.2d at 526.

Here, the trial court's findings reveal that the trial court based Eick's five-year sentence primarily on Eick's unchecked recidivism, as punctuated by his new bail jumping conviction. We see no evidence that the trial court relied on what Eick claims was misinformation on sexual misconduct and other matters. As the trial court noted, Eick had an extensive record of crimes and failures on probation and parole. Eick's latest offense was a direct violation of his bail terms and extended a pattern of pyramiding criminality. Under the circumstances, the trial court concluded that a substantial sentence was needed to protect the public.

This reflected a rational exercise of sentencing discretion. Eick's prior encounters with the criminal justice system had left him unreformed, and he had squandered a series of second chances. *See* ***State v. Mathis***, 39 Wis.2d 453, 458, 159 N.W.2d 729, 731 (1968). We are satisfied that the trial court's sentence was commensurate with Eick's current bail jumping conviction, his unabated recidivism, the public's need for protection, and the need to deter Eick and like-minded wrongdoers from criminal activity. Eick's bail jumping and unabated recidivism merited a proportionate term of incarceration, and we see nothing excessive or conscience-shocking in Eick's five-year prison term.

Last, Eick does not have a valid claim of ineffective trial counsel. Eick needed to show both deficient performance by trial counsel and prejudice from such performance. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Eick claims that his trial counsel did not provide him sufficient time to review the PSI before sentencing. Eick claimed that he was a poor reader and had only fifteen minutes to review the report. Trial counsel testified that he offered to get more time from the court and that Eick did not ask for any. In any event, we see no prejudice and therefore need not decide whether counsel's performance was deficient. First, the trial court told Eick at sentencing that he could have more

time; Eick asked for none, leaving the inference that he had no need to review the PSI further. Second, if the trial court made incorrect findings at sentencing in an honest reliance on defects in the PSI, Eick never informed the trial court; he could have corrected those errors at that time. Third, when Eick tried to identify bias and errors in the PSI at the postconviction hearing, the trial court acknowledged them and reassured Eick that none had had any bearing on his sentence. We see no evidence that anything from the PSI improperly influenced Eick's sentence, and Eick has therefore not satisfied the prejudice prong of the ***Strickland*** standards.

By the Court.—Judgment and order affirmed.

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