COURT OF APPEALS
DECISION
DATED AND FILED

November 25, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

Nos. 98-1423-CR
98-1424-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JEREMY M. WINE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Jeremy Wine appeals from the order of the circuit court denying his many motions for postconviction relief. The issue on appeal is whether the circuit court erred when it denied the motions and declined to hold an evidentiary hearing. We affirm.

Wine pleaded guilty to disorderly conduct while armed as a habitual criminal, forgery as a party to the crime, and theft as a party to the crime and as a habitual criminal. After conducting an extensive plea colloquy, the court accepted his plea and sentenced him to five years on the forgery charge and one year each, to run consecutively, on the other charges. An appeal followed, which was dismissed voluntarily. Wine then filed numerous motions for postconviction relief. The trial court denied them all by an order entered on May 8, 1998. It is from this order that Wine appeals.

Wine argues that he should be permitted to withdraw his pleas because: (1) he was not advised of the consequences of his plea; (2) the trial court judge should have recused himself; (3) he received ineffective assistance of counsel; (4) the prosecutor failed to disclose evidence favorable to him; (5) the trial court erroneously exercised its discretion by imposing the sentence it did; (6) the presentence investigation was inaccurate and his waiver of his rights was coerced; (7) a victim impact statement constitutes a new factor which should have been taken into consideration by the trial court; and (8) the trial court should have held an evidentiary hearing on his motions.

A defendant may withdraw a guilty plea after sentencing only by showing a manifest injustice by clear and convincing evidence. ***State v. Bentley***, 201 Wis.2d 303, 311, 548 N.W.2d 50, 54 (1996). Facts supporting the plea withdrawal must be alleged in the petition and the defendant may not just rely on conclusory allegations. ***Id.*** at 313, 548 N.W.2d at 54. The defendant should "provide facts that allow the reviewing court to meaningfully assess his or her claim." ***Id.*** at 314, 548 N.W.2d at 55. Whether a motion alleges sufficient facts is a question of law which we review de novo. ***Id.*** at 310, 548 N.W.2d at 53. If the motion does not allege sufficient facts, the trial court may in its discretion decide

the postconviction motion without holding an evidentiary hearing. ***Id.*** at 310-11, 548 N.W.2d at 53. This court then reviews the trial court's decision under the erroneous exercise of discretion standard. ***Id.*** at 311, 548 N.W.2d at 53.

Wine first argues he was not advised of the consequences of his plea, and he did not understand that he might receive the sentence he actually received. Specifically, Wine contends he was not informed the sentences imposed would run consecutively to the sentence he was serving at the time of sentencing.

The record indicates that the trial court engaged in an extensive plea colloquy with Wine before accepting his plea. The court explained to Wine the offenses with which he was charged. The court further explained the maximum possible sentence that Wine could receive on each count. Wine stated that he understood. The court explained to Wine the specific constitutional rights he was waiving by entering the plea and asked if Wine understood each of them. In each case Wine replied that he did. The court also asked if any promises, other than those in the plea agreement, had been made to him or if he had been threatened or coerced to plead guilty. Wine replied in the negative. In addition Wine signed a plea questionnaire. The plea colloquy satisfies the requirements set forth in ***State v. Bangert***, 131 Wis.2d 246, 261-72, 389 N.W.2d 12, 20-25 (1986), and § 971.08, STATS.

Although Wine argues that his pleas were invalid because he was not informed that the sentences imposed could run consecutively to the term he was serving at the time, he has not cited any authority that supports this argument.[1]

[1] Wine cites to ***United States v. Neely***, 38 F.3d 458 (9th Cir. 1994). This case, however, concerns when a federal court must inform a federal defendant that his term will run consecutively to a state term. It is not controlling here.

Also, there is no indication that he raised this argument in the trial court. Therefore, we will not consider it. *See* ***State v. Pettit***, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992); ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145 (1980) (general rule is that issues not raised in the trial court will not be considered for the first time on appeal).

Wine next argues that the trial court judge should have recused himself, that he received ineffective assistance of counsel, and that the prosecutor failed to disclose or investigate certain evidence. Since it appears that Wine did not raise these issues in the trial court, we will not consider them. ***Wirth***, 93 Wis.2d at 443-44, 287 N.W.2d at 145.

Wine also argues that the trial court erroneously exercised its discretion by imposing the sentence it imposed. Sentencing lies within the sound discretion of the trial court, and there is a strong public policy against appellate interference with that discretion. *See* ***State v. Mosley***, 201 Wis.2d 36, 43, 547 N.W.2d 806, 809 (Ct. App. 1996). The trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *See* ***id.*** The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender and the need for protection of the public. *See* ***State v. Harris***, 119 Wis.2d 612, 623, 350 N.W.2d 633, 639 (1984). The weight to be given the various factors is within the trial court's discretion. *See* ***Cunningham v. State,*** 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

Wine has not established that the court's sentence was unreasonable. To the contrary, a review of the record establishes that the trial court properly exercised its discretion when it sentenced Wine. The court considered that Wine

had an extensive criminal record, he showed little remorse, and he was likely to reoffend if he were not incarcerated. We cannot conclude that the trial court erroneously exercised its discretion when it sentenced Wine.

Wine also argues he is entitled to resentencing because the trial court relied on inaccurate information in the presentence report (PSI), and his waiver of his rights concerning the PSI was coerced. At the sentencing hearing Wine's defense counsel raised some concerns about the PSI. The court then asked if he wanted the matter continued. Wine answered, saying no. His defense counsel also replied no. The following colloquy then occurred:

> THE COURT: Mr. Wine, you understand that if you want it, I will continue this matter a couple of days so that [the person who prepared the PSI] can contact you.
>
> MR. WINE: No. It's all right the way it is. I don't want to have to go through the pressures of being in the jail with the jail staff that I previously sued and their attitude. So I don't want to have to stay here any longer. I just want to get this stuff over with.

Wine cannot now complain that the PSI contained inaccuracies or that he was coerced into "waiving" his rights. When a defendant has a fair opportunity to object before a ruling or order is made, he must do so to avoid waiving the error. *See* § 805.11, STATS.; *see also* ***State v. Hubanks***, 173 Wis.2d 1, 16, 496 N.W.2d 96, 101 (Ct. App. 1992). Since Wine had a fair opportunity to object to the use of the PSI and he did not, he has waived any objections.

Wine also argues that we must consider the victim impact statement as a new factor. It does not appear, however, that Wine properly presented the document to the trial court. Since the document is not part of the record, we will

not consider it. *See* ***State v. Aderhold***, 91 Wis.2d 306, 314, 284 N.W.2d 108, 112 (Ct. App. 1979).

Finally, Wine argues that the trial court erred when it refused to grant an evidentiary hearing on the preceding seven issues. As discussed, it does not appear from the record that he even raised many of the issues before the trial court. As to the issues he did raise, the trial court determined that his motions did not raise sufficient facts to warrant an evidentiary hearing. We cannot conclude this was an erroneous exercise of the court's discretion. *See* ***Bentley***, 201 Wis.2d at 311, 548 N.W.2d at 53. Therefore, we affirm.

By the Court.—Order affirmed.

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