COURT OF APPEALS
DECISION
DATED AND FILED

January 23, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0320-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LASKO W. JACKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Lasko W. Jackson appeals from a judgment of conviction entered after a jury trial and from an order denying his postconviction motion for resentencing. Jackson was found guilty of five counts of first-degree sexual assault, contrary to WIS. STAT. § 940.225(1)(c), one count of robbery,

contrary to WIS. STAT. § 943.32(1)(a), one count of false imprisonment, contrary to WIS. STAT. § 940.30, one count of first-degree recklessly endangering safety, contrary to WIS. STAT. § 941.30(1), and one count of arson, contrary to WIS. STAT. § 943.02(1)(a), all as a party to a crime, contrary to WIS. STAT. § 939.05.[1] Jackson claims: (1) the evidence presented at trial was insufficient to sustain guilty verdicts on seven of his convictions; and (2) the trial court erroneously exercised its discretion when it imposed what he claims was an excessive and unduly harsh sentence of 257 years in prison.[2] We affirm.

I. BACKGROUND.

¶2 The evidence presented during a three-day jury trial revealed the circumstances surrounding the nine crimes with which Jackson was charged. Jackson and three other men went to the home of J.P. Mitchell and Patricia B. A dispute arose over a boom box. The men beat Mitchell, took his wallet and house keys, and forced Mitchell to give one of the men a television. They then ordered Mitchell to leave the house and forced Patricia to remain. Jackson beat Patricia, ordered her to strip, and, with two other men, repeatedly sexually assaulted her. After these assaults, he then threatened to burn Patricia by igniting the contents of a spray starch can. Jackson doused her with lighter fluid. Patricia was able to run and lock herself in a bathroom. While inside the bathroom, Patricia saw lighter fluid pouring in from underneath the door. The lighter fluid was then set on fire.

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[2] Jackson does not argue that the evidence was insufficient regarding one of the five first-degree sexual assault convictions or the recklessly endangering safety conviction.

Patricia eventually left the bathroom and discovered that several fires had been set throughout the house. As noted, the jury convicted Jackson of all counts.

¶3 At sentencing, the trial court noted that the crimes committed by Jackson were "dehumanizing, degrading, painful and just plain horrific" and sentenced him to 257 years in prison. Jackson moved for resentencing. The trial court denied Jackson's postconviction motion without a hearing, concluding, in its written order, that "[b]ased on the defendant's prior criminal history, his inability to function on probation, the *extremely* egregious nature of the offenses, his character, and the absolute need to protect the community from further intrusions by the defendant, the sentences are neither excessive nor unduly harsh." (Emphasis in original.)

II. DISCUSSION.

A. Insufficient Evidence

¶4 Jackson first argues that there was insufficient evidence to convict him on seven of the nine charges. When reviewing the sufficiency of the evidence, we will reverse a conviction only if "the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990).

1. Sexual Assaults

¶5 Jackson argues that the evidence was insufficient to prove he committed four of the sexual assaults of Patricia.[3] Jackson contends that he did not act in furtherance of these four crimes because he "did not hold the victim down, did not hold a gun to her head, or take any other actions" during the commission of these crimes. We disagree. Defendants may be found guilty as parties to a crime "if, between them, they perform all the necessary elements of the crime with mutual awareness of what the other is doing." ***Roehl v. State***, 77 Wis. 2d 398, 407–408, 253 N.W.2d 210, 214 (1977). Here, there was clearly concerted activity by all involved. Patricia testified that Jackson ordered her to strip and told her to go into the bedroom, the scene of these crimes. As one of the other men directly committed the first sexual assault against Patricia, Jackson paced around the bedroom and stated "Hurry up. I'm next." After the first assault, Jackson and another man then simultaneously sexually assaulted Patricia. Jackson then poured hot sauce onto the victim's face and body while the other men assaulted her for the fourth and fifth time. Thus, Patricia's trial testimony amply demonstrated that Jackson fully participated in all the crimes. Accordingly, the jury could have reasonably found beyond a reasonable doubt that Jackson was a party to each of the sexual assaults.

[3] Jackson concedes in his brief to this court that the evidence was sufficient to prove he directly committed one act of sexual assault of Patricia. Although the heading of Jackson's argument challenges *three* counts of sexual assault, because there were five total counts of sexual assault and Jackson's concession involves only one, we interpret his argument to encompass the remaining *four* counts.

2. Robbery

¶6 Jackson also argues that the evidence was insufficient to convict him of robbery. He claims that no intent to steal existed since the co-defendants only took Mitchell's television as "collateral" for the boom box already taken by Mitchell. This argument is without merit. Jackson ignores the fact that Mitchell testified that Jackson beat him, along with three other men, and that Jackson was present as one of the other men forcibly took Mitchell's wallet, keys, cigarettes and lighters. Mitchell also testified that Jackson held him down as one of the other men ordered Mitchell to "Grab the T.V. and let's go." Based on this evidence, the jury could have reasonably found Jackson guilty of robbery, as a party to the crime, beyond a reasonable doubt.

3. False Imprisonment

¶7 Jackson next argues that the evidence was insufficient to convict him of false imprisonment because Patricia testified she "mentally" felt she was not able to leave, rather than being physically restrained. Again, we reject Jackson's argument. Although the use of physical force is not required to commit false imprisonment and "[o]ne may be confined or restrained by acts or words or both," *see* WIS JI–CRIMINAL 1275, here the record reflects that Patricia was both physically and psychologically restrained. Jackson hit Patricia in the head, punched and kicked her in the stomach, and told her to lock the door. He also told her not to move while holding a flammable spray starch can in one hand and a lighter in the other. Additionally, Patricia testified that it was "made clear that I was to stay there," and that Jackson mentally prevented her from leaving by telling her to lock the door and because she feared Jackson would beat her as he had just

done to Mitchell. This evidence permitted the jury to reasonably find beyond a reasonable doubt Jackson guilty of falsely imprisoning Patricia.

4. Arson

¶8 Jackson also challenges his arson conviction as party to a crime. He claims that this conviction was based on insufficient evidence because Patricia "never saw who started the fires." We disagree. It was not necessary for Patricia to see Jackson setting fires in her home for the jury to conclude, beyond a reasonable doubt, that Jackson was guilty of the charge. A criminal conviction may rest entirely on circumstantial evidence, even if the circumstantial evidence supporting the conviction also supports an equally reasonable theory of innocence. ***Poellinger***, 153 Wis. 2d at 507–508, 451 N.W.2d at 758. As noted, Patricia testified that Jackson, holding a cigarette lighter in one hand and a flammable spray starch can in the other, told her not to move. Jackson then poured lighter fluid over her head, face, and body, at which point, Patricia testified, she ran to the bathroom because "I felt that he would not hesitate to strike the lighter." Patricia observed lighter fluid pouring in underneath the bathroom door and then saw fire under the door. When Patricia left the bathroom, she saw that other fires had been started in her home. Irrespective of who may have physically started the fires, this evidence was sufficient to convict Jackson of arson, as party to a crime.

B. Sentencing

¶9 Jackson also argues that his 257 year prison sentence was unduly harsh and unconscionable, and that his sentence should be reduced to ninety-seven years. We will not disturb a sentence imposed by a trial court, however, unless the trial court erroneously exercised its discretion. ***Ocanas v. State***, 70 Wis. 2d 179, 183, 233 N.W.2d 457, 460 (1975). We will find an erroneous exercise of

discretion "only where the sentence is 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." ***Id.***, 70 Wis. 2d at 185, 233 N.W.2d at 461. A strong public policy exists against interfering with the trial court's discretion in determining sentences, ***State v. Sarabia***, 118 Wis. 2d 655, 673, 348 N.W.2d 527, 537 (1984), and "[t]he trial court is presumed to have acted reasonably." ***State v. Wickstrom***, 118 Wis. 2d 339, 354, 348 N.W.2d 183, 191 (Ct. App. 1984). To obtain relief on appeal, a defendant "must show some unreasonable or unjustified basis in the record for the sentence imposed." ***State v. Borrell***, 167 Wis. 2d 749, 782, 482 N.W.2d 883, 895 (1992).

¶10 The three primary factors which a sentencing court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public.[4] ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633, 639 (1984). Here, the record reflects that the trial court considered the appropriate factors. As we have seen, the trial court found that the series of events here was "dehumanizing, degrading, painful and just plain horrific." It noted that Jackson had a prior record both as a juvenile and as an adult and that he had failed on probation supervision. The trial court stated that while it empathized with Jackson's "chaotic home environment" that environment did not justify or excuse

[4] The trial court may also consider: the defendant's past record of criminal offenses; the defendant's history of undesirable behavior patterns; the defendant's personality, character and social traits; the presentence investigation results; the viciousness or aggravated nature of the defendant's crime; 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 or cooperativeness; the defendant's rehabilitative needs; the rehabilitative needs of the victim; the rights of the public; and the length of the defendant's pretrial detention. ***State v. Jones***, 151 Wis. 2d 488, 495–496, 444 N.W.2d 760, 763–764 (Ct. App. 1989).

his crimes. The trial court considered the presentence report, which indicated that Jackson had shown little or no remorse for the crimes. The trial court concluded that Jackson was a serious danger to the community and deserved the maximum sentence. Although Jackson does not believe his crimes warranted a maximum sentence, "a trial judge, in an aggravated case and in the exercise of proper discretion," may impose a maximum sentence. ***McCleary v. State***, 49 Wis. 2d 263, 290, 182 N.W.2d 512, 526 (1971). The trial court did not erroneously exercise its sentencing discretion.

By the Court.—Judgment and order affirmed.

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