

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-3093-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CF-674

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

NEVADA JEROME,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: DAVID M. BASTIANELLI, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Nevada Jerome has appealed from a judgment convicting him upon pleas of no contest of one count of first-degree sexual assault by use or threat of use of a dangerous weapon in violation of WIS. STAT.

§ 940.225(1)(b) (2001-02),¹ one count of burglary while armed with a dangerous weapon in violation of WIS. STAT. § 943.10(2)(a) (1999-2000), and one count of intimidation of a victim in violation of WIS. STAT. § 940.45(1) (1999-2000). He has also appealed from an order denying his motion for sentence modification.

¶2 Jerome was sentenced to 30 years in prison and 20 years of extended supervision for the sexual assault conviction; 20 years in prison and 20 years of extended supervision for the burglary conviction; and 5 years in prison with 5 years of extended supervision for the intimidation of a victim conviction. All of the sentences are consecutive. Pursuant to these sentences, Jerome will not be eligible for release until he is 110 years old.

¶3 The sole issue on appeal is whether the trial court erroneously exercised its discretion in imposing sentence. Because we conclude that the trial court acted within the scope of its discretion, we affirm the judgment and order.

¶4 Jerome contends that the trial court failed to provide adequate reasons for imposing consecutive sentences totaling fifty-five years in prison, essentially sentencing him to life in prison for crimes that do not carry a life sentence. He also contends that the record provides insufficient facts to support the sentences. We disagree with both contentions.

¶5 Sentencing is left to the discretion of the trial court and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Rodgers*, 203 Wis. 2d 83, 93, 552 N.W.2d 123 (Ct. App.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

1996). Appellate courts have a strong policy against interference with that discretion and the sentencing court is presumed to have acted reasonably. *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record. *Id.* at 622-23.

¶6 When a defendant is convicted of more than one offense, the sentencing court may impose consecutive, rather than concurrent, sentences. *State v. Hall*, 2002 WI App 108, ¶8, 255 Wis. 2d 662, 648 N.W.2d 41. “In sentencing a defendant to consecutive sentences, the trial court must provide sufficient justification for such sentences and apply the same factors concerning the length of a sentence to its determination of whether sentences should be served concurrently or consecutively.” *Id.*

¶7 The primary factors the trial court must consider in imposing a sentence are the gravity of the offense, the character of the offender, and the need for protection of the public. *Harris*, 119 Wis. 2d at 623. Additional relevant considerations include the defendant’s past criminal record or history of undesirable behavior patterns; the defendant’s personality, character and social traits; the results of a presentence investigation; the vicious or aggravated nature of the crime; the degree of the defendant’s culpability; his or her remorse and cooperativeness; the need for close rehabilitative control of the defendant; and the rights of the public. *Id.* at 623-24.

¶8 An erroneous exercise of discretion may be found when the sentence is so excessive and unusual and so disproportionate to the offense 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 (1975). An erroneous exercise of sentencing discretion might also be found if the trial court failed to state on the record the relevant and material factors which influenced the court's decision, relied upon factors which were totally irrelevant or immaterial to the decision, or gave too much weight to one factor in the face of other contravening considerations. *State v. Bizzle*, 222 Wis. 2d 100, 105, 585 N.W.2d 899 (Ct. App. 1998). However, the weight to be given to each of the relevant factors is particularly within the wide discretion of the trial court. *State v. Curbello-Rodriguez*, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984). Imposition of a sentence may be based on any of the three primary factors after all relevant factors have been considered. *Id.* The deference accorded the trial court's discretion comes from its superior position to observe the defendant's demeanor, weigh the evidence and consider the relevant factors. *Bizzle*, 222 Wis. 2d at 105.

¶9 Jerome's convictions arose from an attack on his estranged wife in the early hours of July 28, 2001. At the time of these offenses, Jerome was facing charges of battery to his wife and disorderly conduct, had been released on bond, and was subject to a no-contact order.

¶10 According to the complaint and the testimony at the preliminary hearing, Jerome entered his wife's locked residence the night after she obtained the no-contact order. Earlier that evening, Jerome had retrieved clothes from the residence and told his wife that he "didn't care what happened to him and he would go to jail." His wife awakened at approximately 2:00 a.m. on July 28, 2001, to find Jerome standing naked next to her bed, holding a knife sharpener. Jerome told her that he was going to slice her up, cut her into pieces, put the pieces in a bag, and bury the bag in a hole at an excavation site. He also told her that he was going to cut off her head and send it to her daughter. He told her that he had

not parked at the house and could get away with anything. Jerome then sexually assaulted his wife vaginally and anally, and forced her to perform fellatio on him. Throughout the assaults, Jerome made comments blaming his wife for his troubles.

¶11 According to the complaint, Jerome eventually passed out, and his wife went to the police station. Upon entering the residence, the police found Jerome in bed with a knife sharpener lying next to him on the nightstand. His car was parked approximately one-quarter mile from the residence. In addition, the record indicates that he cut the telephone lines to the residence and brought plastic bags into the house.

¶12 Prior to sentencing Jerome, the trial court reviewed the presentence report, listened to argument from the prosecutor and defense counsel, and listened to statements from Jerome, his wife, and her daughter. In sentencing Jerome, the trial court expressly addressed the gravity of the offense, the character of the defendant, and the need for protection of the public. In considering Jerome's character, the trial court recognized that he had positive accomplishments, including his military service and employment record. It also recognized that he had a serious alcohol problem, but concluded that alcohol use could not excuse the offenses committed here and that Jerome had not taken advantage of prior opportunities to deal with his alcohol problems.

¶13 The trial court also addressed Jerome's criminal record, noting that he had four drunk driving convictions, a 1983 sexual assault conviction arising from the assault of his daughter, and a 1987 conviction for battery as a repeat offender. While acknowledging that the 1983 sexual assault and the 1987 battery convictions were dated, it also considered that the offenses were serious,

particularly the sexual assault conviction because Jerome stood in a position of trust in relation to the child victim.

¶14 The trial court also noted that Jerome had been charged with the sexual assault of his stepdaughter in 1988, but gave little weight to the matter because the charge was dismissed. However, it noted that Jerome's contacts with the legal system should have alerted him that he needed to change his life or deal with his alcohol problems in some manner.

¶15 In considering Jerome's character, the trial court considered the fact that Jerome committed the present offenses while released on bond in the 2001 battery case, and while subject to a no-contact order imposed by the court, evincing a disregard for the legal system. The trial court noted that this disregard of the court's authority had also been evinced earlier in Jerome's life when he committed a battery while on probation for the sexual assault of his daughter.

¶16 In considering the seriousness of the present offenses, the trial court noted that planning went into the assault, including parking the car down the street from the residence, bringing plastic bags to the scene, and threatening the victim with a weapon. It found Jerome's version of the events to be incredible, and relied on the victim's statement that abuse by Jerome was frequent and longstanding, an assertion supported by the record. It considered the effects of Jerome's conduct on his wife, and her belief that she survived only because Jerome was intoxicated and passed out. It considered the victim's statements regarding Jerome's threats to cut her up, put the pieces in a bag, and send her head to her daughter, concluding that Jerome was an extremely dangerous individual who was capable of causing great bodily harm and death.

¶17 Based on Jerome's personal history and the nature of these offenses, the trial court concluded that he posed an extreme danger to the community and to people who knew him. It concluded that society needed to be protected from him. It then imposed consecutive sentences totaling fifty-five years of imprisonment and forty-five years of extended supervision.

¶18 No basis exists to disturb the sentences imposed by the trial court. It discussed the three primary sentencing factors, as well as other relevant factors underlying the three primary factors. It applied them in a reasoned and reasonable manner in assessing Jerome's personal characteristics and the gravity of the offenses. The record establishes that this was a heinous criminal episode, fraught with danger. Coupled with Jerome's criminal history and his disregard for the law, the trial court could reasonably conclude that Jerome posed an extreme danger to the community, and that consecutive sentences incarcerating Jerome for fifty-five years were appropriate, despite his age.²

¶19 Because the trial court considered and weighed the proper sentencing factors in a reasonable manner, and because the facts of record support the trial

² Jerome contends that the trial court failed to adequately explain why it imposed sentences which included a period of incarceration which exceeded the recommendation of the presentence report by forty to forty-five years. However, as acknowledged by Jerome, the presentence report is not binding on the trial court and is merely a relevant factor for the trial court to consider. *State v. Hall*, 2002 WI App 108, ¶16, 255 Wis. 2d 662, 648 N.W.2d 41. Here, the trial court expressly considered the recommendations of the report, eliciting information indicating that the presentence report writer was unaware of Jerome's conviction in 1987 for battery as a repeat offender and was aware of Jerome's 1983 conviction for sexual assault in only a limited manner derived from Jerome's self-reporting. The trial court was reasonably concerned that the presentence report writer lacked all necessary information when preparing the recommendation. Most importantly, the trial court provided adequate reasons for electing to impose lengthier, consecutive sentences, and the record supports its decision.

court's choice of sentence, no basis exists to disturb the judgment or the order denying postconviction relief.

By the Court.—Judgment and order affirmed.

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

