

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 12, 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 Nos. 03-0625-CR
03-0626-CR
STATE OF WISCONSIN**

**Cir. Ct. Nos. 01CM006517
02CM003760**

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TRACEY T. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from judgments and orders of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Tracey T. Williams appeals from the judgments of conviction, following his guilty pleas for battery and resisting an officer, in the first of these two consolidated cases, and disorderly conduct (habitual criminality) and bail jumping (habitual criminality), in the second, and from the orders denying

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version.

postconviction relief in both. He argues that his sentences are “unduly harsh and unconscionable” and, therefore, that the circuit court erroneously exercised discretion in denying his postconviction motion for sentence modification. This court affirms.

¶2 According to the criminal complaints and other portions of the records, on July 21, 2001, Williams battered his girlfriend, causing “a visibly swollen left eye with blood dripping down her face.” The girlfriend’s nine-year-old child witnessed the assault and called police reporting that his mother “was getting beat up.” Williams resisted the police efforts to intervene, submitting to arrest only after being pepper-sprayed three times and being subdued by additional backup officers. On May 11, 2002, in violation of a no-contact order, a condition of release on the battery and resisting charges, Williams caused a disturbance at his girlfriend’s residence.

¶3 On August 15, 2002, the circuit court sentenced Williams to two, eighteen-month consecutive terms totaling three years on the habitual criminality counts of bail jumping and disorderly conduct, and additional consecutive terms of seven months for battery and sixty days for resisting. On February 10, 2003, the court denied Williams’ motion for sentence modification.

¶4 Williams argues that his sentences are unduly harsh. He contends that the circuit court erroneously exercised discretion “by discounting the desirability of work release privileges” even though “both the State and defense advocated for it.” He maintains that “[t]he harshness is compounded by the fact that [he] will be subject to parole revocation and re-incarceration” under WIS. STAT. § 302.11 and, therefore, the sentences, “cause[] the unintended results of subjecting [him] to the mandatory release provisions” of the statute, with the

attendant potential for parole revocation and re-incarceration. This court rejects his arguments.

¶5 This court will uphold a sentence unless the trial court erroneously exercised discretion. *State v. J.E.B.*, 161 Wis. 2d 655, 661, 469 N.W.2d 192 (Ct. App. 1991). This court presumes that the trial court acted reasonably. *Id.* To gain reversal, the defendant must show that the court relied upon an unreasonable or unjustifiable basis for the sentence. *Id.* Public policy strongly disfavors appellate interference with a trial court’s sentencing discretion. *State v. Teynor*, 141 Wis. 2d 187, 219, 414 N.W.2d 76 (Ct. App. 1987).

¶6 A sentencing court must consider the gravity of the offense, the character and circumstances of the defendant, and the protection of the public. *State v. Borrell*, 167 Wis. 2d 749, 773, 482 N.W.2d 883 (1992). The court has discretion to give each sentencing factor the weight it deems appropriate. *J.E.B.*, 161 Wis. 2d at 662. Further, a sentencing “court has discretion in determining the length of the sentence within the permissible range set by statute.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). An erroneous exercise of discretion will be found only if 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.*

¶7 As the circuit court noted, Williams had an extensive record. While the prosecutor and defense counsel, at sentencing, did not pinpoint each and every conviction, they, together with certified records establishing Williams’ habitual criminality, identified convictions for battery, resisting, and sexual assault in 1992, battery and possession of controlled substance in 1993, disorderly conduct in

1996, and possession of controlled substance in 1998. This substantial record, combined with Williams' bail jumping, and his failure to appear in these cases, led the circuit court to conclude, "You've demonstrated by your conduct that you're not able or willing to comply with court orders." Thus, quite reasonably, the court rejected any disposition, including work-release, that would depend on Williams' cooperation.

¶8 Additionally, the circuit court rejected Williams' lame attempts to "justify [his] conduct" and correctly commented on several aggravating factors including the circumstances of the battery and resisting. The court emphasized, "[Y]ou struck the victim in front of her child, and the child had to call the police; and then when the police came in to resolve the situation, you had to be sprayed with pepper spray."

¶9 Williams does not claim that the circuit court failed to consider the required criteria. Essentially, he contends only that the court, weighing certain factors differently, could have ordered concurrent sentences allowing for work-release. He has failed, however, to offer anything to establish that the court erroneously exercised discretion or ordered sentences that "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Ocanas*, 70 Wis. 2d at 185.

By the Court.—Judgments and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

