COURT OF APPEALS
DECISION
DATED AND FILED

December 20, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP553-CR **Cir. Ct. No. 2002CF3835**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JERMETRIUS J. FARMER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. A jury found Jermetrius J. Farmer guilty of one count of first-degree reckless endangerment, while armed, and one count of possession of a firearm by a felon. The court imposed an eight-year sentence for the reckless endangerment count, comprised of three years of initial confinement

and five years of extended supervision, to run consecutive to any other sentence. The court imposed a twelve-month concurrent sentence for the possession of a firearm count. The circuit court denied Farmer's postconviction motion for sentence modification. On appeal, Farmer renews his challenge to the sentence.[1] We affirm.

¶2 We first summarize the controlling legal principles.

¶3 Sentencing is within the sound discretion of the trial court, and we will not reverse absent an erroneous exercise of sentencing discretion. ***State v. Tarantino***, 157 Wis. 2d 199, 221, 458 N.W.2d 582 (Ct. App. 1990). This exercise of discretion contemplates a process of reasoning based on facts that are of record or that are reasonably inferred from the record and a conclusion based on a logical rationale founded upon proper legal standards. ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). A defendant who challenges a sentence has the burden to show that it was unreasonable, and we presume that the court acted reasonably. ***State v. Lechner***, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998).

¶4 The three primary sentencing factors a circuit court must consider are: (1) the gravity of the offense; (2) the character of the offender; and (3) the need for the protection of the public. ***State v. Rodgers***, 203 Wis. 2d 83, 93, 552 N.W.2d 123 (Ct. App. 1996); ***State v. Larsen***, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The weight to be given to each factor is left to the trial court's broad discretion. ***State v. Thompson***, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992). After consideration of all relevant factors, the sentence may

[1] In the postconviction motion, Farmer also challenged the effectiveness of his trial counsel. He does not pursue that argument on appeal.

be based on any one of the three primary factors. ***State v. Krueger***, 119 Wis. 2d 327, 338, 351 N.W.2d 738 (Ct. App. 1984).

¶5 Additional factors that the trial court may take into consideration are: (1) the past record of criminal offenses; (2) any history of undesirable behavior patterns; (3) the defendant's personality, character and social traits; (4) the results of a presentence investigation; (5) the vicious or aggravated nature of the crime; (6) the degree of the defendant's culpability; (7) the defendant's demeanor at trial; (8) the defendant's age, educational background and employment record; (9) the defendant's remorse, repentance and cooperativeness; (10) the defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention. ***Larsen***, 141 Wis. 2d at 426-27. These are denominated the secondary factors, which a sentencing court may, but is not obligated to address. *See* ***State v. Lewandowski***, 122 Wis. 2d 759, 763, 364 N.W.2d 550 (Ct. App. 1985). The general deterrent effect of a sentence is also a proper consideration in sentencing. ***State v. Sarabia***, 118 Wis. 2d 655, 674, 348 N.W.2d 527 (1984).

¶6 Finally, the length of the sentence imposed by a trial court will be disturbed on appeal 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." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶7 On appeal, Farmer complains that the court viewed his "level of intelligence and facility with spoken language … in an unremittingly negative fashion" and contends that the "court considered [his] continued protestation of innocence and attempts to explain the changes he had attempted to make in his life

following his last convictions to be aggravating factors requiring the imposition of a more severe sentence." Because of those claimed errors, Farmer contends that his sentence is excessive. We reject Farmer's contention.

¶8 Prior to the court's imposition of sentence, Farmer engaged in a lengthy allocution. Farmer denied shooting the victim and claimed that he did not know who did. He claimed that he had become "a family man" since his last conviction, was raising his two children and three stepchildren, and was "keep[ing] everybody strong." Farmer said he had influenced his mother to "get off of the drugs and start doin' right." Farmer admitted that his father was "in the penitentiary" and that he "tried to not walk in [his father's] footsteps. " Farmer told the court that because he had been shot previously, he "would never pick up a gun and hurt anybody and put them through the trauma" he experienced. Farmer admitted that his criminal record was "bad" and that he had "sold dope." Farmer asserted, however, that he had "cut that short" and "move[d] … all the negative things … out of the way of my life and just put my family there." Farmer told the court that he has fed "drug abusers, anybody walkin' down the street" during "cookouts" at his house. According to Farmer, he is "the ideal figure" in his neighborhood who "[e]verybody knows [because he is] a good person."

¶9 The record shows that the sentencing court responded to Farmer's allocution, and in doing so, the court addressed factors relevant to the sentencing decision. The court considered Farmer's character. The court rejected Farmer's assertion that he was a role model for others. The court acknowledged that Farmer had an "innate intelligence" who "kn[e]w the streets" and wore the "cloak of the street-wise philosopher as a badge of honor." The court stated, however, that Farmer would have to "take that cloak off" or he would "have no chance of being rehabilitated."

¶10 The court considered Farmer's background. Despite Farmer's claimed rejection of his father's lifestyle, the court noted that Farmer had done "nothing but emulate[e]" him since he was a teenager. The court stated that Farmer's record of drug convictions showed that he had "gone head first into the pool of drug activity" and that Farmer had "insult[ed the court's] intelligence" with his claim that he had "tried to steer clear of it."

¶11 The court considered Farmer's education, stating that "good family men do not drop out of high school because they engage in disruptive behavior and because they want to do dope or smoke marijuana or do whatever it is that they want to do."

¶12 The court considered Farmer's criminal record, noting that this conviction was "eerily similar" to a prior drug-related conviction when he was sixteen-and-one-half years old.[2] The court stated that "[w]here there are drugs, there are guns," and it rejected Farmer's assertion that he was "a good drug dealer" who was not involved with violence. Again, the court rejected Farmer's self-description as a good man, stating "[g]ood men do not engage in repeated acts of criminal activity as it relates to drugs. Good family men do not abscond from their probation over and over again both as a juvenile and as an adult."

¶13 The court described Farmer's work record as "atrocious." The court recognized that Farmer could read at the level of a "second year college person" but stated that it was "a disgrace" that Farmer had not used that ability "to get [him]self employed or to help people in a meaningful way."

[2] The presentence investigation report describes that conviction as possession of a controlled substance – cocaine; possession of a dangerous weapon by a child.

¶14 The court considered the need to protect the community. The court stated that "[s]hootings – use of guns where people are seriously injured or killed is just not an acceptable behavior and even if it weren't criminally wrong, it certainly is immoral behavior."

¶15 The record shows that the court properly exercised sentencing discretion. The court considered at length the gravity of the crime, Farmer's character and the need to protect the public. Appellate deference in the sentencing context means this court will not "second-guess" the sentencing court's assessment of Farmer's "sincerity." ***State v. Kaczynski***, 2002 WI App 276, ¶12, 258 Wis. 2d 653, 654 N.W.2d 300. A court may consider a defendant's refusal to admit his guilt as an indication of his lack of remorse. ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). A court may consider positive attributes to be aggravating factors, depending on the circumstances of the defendant and the circumstances of the case. ***State v. Thompson***, 172 Wis. 2d 257, 265-67, 493 N.W.2d 729 (Ct. App. 1992). And, while Farmer may disagree with the relative weight that the court assigned to the various factors, "[t]he weight to be given each factor is within the discretion" of the court. ***State v. Wickstrom***, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984).

¶16 The sentence is not excessive. Farmer's juvenile and adult criminal record included five drug-related convictions, a burglary and felony bail jumping. Given that record and the other factors discussed above, the sentence imposed by the court does not "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.—Judgment and order affirmed.

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