COURT OF APPEALS
DECISION
DATED AND FILED

October 18, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2634-CR **Cir. Ct. No. 2003CF5575**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAWN L. SANDERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Dawn Sanders appeals from a judgment convicting her of one count of delivery of more than fifteen but less than forty grams of a controlled substance (cocaine), party to a crime. She argues that the circuit court

erroneously exercised discretion at her sentencing. Because we conclude that the circuit court properly exercised discretion, we affirm.

¶2 Sanders was arrested after selling a white substance that tested positive for cocaine to a confidential informant of the City of Milwaukee Police Department for $875. She entered a guilty plea to the drug charge arising from the transaction. The circuit court imposed an eight-year sentence, consisting of three years of initial confinement and five years of extended supervision, to be served consecutively to any other sentence. The circuit court also ruled that Sanders was not eligible for the Challenge Incarceration and Earned Release programs.

¶3 Sanders moved the circuit court for a new sentencing hearing, arguing that the sentencing record reflected a lack of reasoning for imposing a consecutive sentence and for declaring her ineligible for the Challenge Incarceration and Earned Release programs. The circuit court rejected the motion and Sanders appeals.

¶4 Sentencing is within the discretion of the trial court and our review is limited to whether the trial court erroneously exercised its discretion. ***State v. Harris***, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). Although the trial court is presumed to have acted reasonably, the trial court must articulate the basis of the sentence on the record. ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). The primary factors to be considered are the gravity of the offense, the character of the offender, and the need to protect the public. ***Id.*** at 275-76. Further:

> [a] court may exceed its discretion when it places too much weight on any one factor … or when the sentence is so excessive as to "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." However, the weight to

> be accorded to particular factors in sentencing is for the trial court…. And where the challenge is that the sentence is excessive, the defendant bears the burden of establishing that it is unjustified or unreasonable.

State v. Johnson, 178 Wis. 2d 42, 53, 503 N.W.2d 575 (Ct. App. 1993) (citations omitted).

¶5 Sanders argues that in ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, the Wisconsin Supreme Court adopted a higher requirement of judicial elaboration at sentencing than was previously accepted. The court in ***Gallion***, while reaffirming the sentencing principles set forth in ***McCleary***, recognized "a greater need to articulate on the record the reasons for the particular sentence imposed" with the advent of truth-in-sentencing. ***Gallion***, 270 Wis. 2d 535, ¶28. However, the court's opinion was careful to limit the application of the re-invigorated ***McCleary*** standards to future cases, those decided after April 15, 2004, the date on which ***Gallion*** was decided. ***Id.***, ¶¶8, 76. Sanders was sentenced on December 9, 2003, and therefore, to the extent ***Gallion*** imposes a higher standard of elaboration on the circuit court, that higher standard does not apply to the case at bar.

¶6 Our review of the sentencing transcript and the circuit court's order denying Sanders's motion for a new sentencing hearing convinces us that the circuit court fully and properly exercised sentencing discretion in this case. The court addressed each of the three factors governing sentencing discretion and explained the scope and weight of each factor in terms of the unique facts of this case and Sanders's history. The court noted that the case involved a significant amount of cocaine and linked Sanders's drug dealing with the destructive impact of illegal drug dealing and the violence it generate. The court itemized Sanders's serious criminal history, including a prior drug conviction and being a felon in

possession of a firearm. The circuit court also noted that Sanders was on probation when the instant offense occurred. The circuit court expressed deep concern about placing Sanders in the appropriate setting:

> Unfortunately, you have a significant prior criminal record. The felon in possession of a firearm jumps out at me. You've received probation. You have a prior drug offense, an earlier one. But this clearly indicates that you can't be supervised in the community, that if you're going to turn your life around, it's going to have to happen in a structured, confined setting. And considering the amount of drugs, the community has to be protected from your conduct.

And, as the court noted later in the hearing, it determined that Sanders was not an appropriate candidate for the Challenge Incarceration and Earned Release programs for the same reasons: "Considering all of the factors and circumstances, the Court is going to find the defendant is not eligible for the Challenge Incarceration, nor is she eligible for the Earned Release program."

¶7 Sanders was sentenced based on the proper factors and her individual circumstances. Accordingly, we hold that the circuit court's exercise of discretion at sentencing and in its disposition of Sanders's motion was wholly proper.

By the Court.—Judgment and order affirmed.

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