

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2006

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. 2005AP629-CR

Cir. Ct. No. 2003CF233

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHESTER GULAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Chester Gulan has appealed from a judgment convicting him after a jury trial of first-degree intentional homicide, party to the crime. He has also appealed from an order denying his motion for postconviction relief.

¶2 The trial court sentenced Gulan to life imprisonment as required by WIS. STAT. § 939.50(3)(a) (2003-04)¹ and WIS. STAT. § 940.01(1)(a). Gulan's sole challenge on appeal is to the decision made by the trial court pursuant to WIS. STAT. § 973.014(1)(b), establishing a parole eligibility date of April 12, 2044. Because we conclude that the trial court acted within the scope of its discretion in setting the parole eligibility date, we affirm the judgment and order.

¶3 Gulan's conviction arises from the murder of a social worker in 1990. Evidence at trial indicated that in early 2003, the police were informed of statements made by Gulan to his wife and another acquaintance implicating himself, Gaylord Gomaz, and Linda Dancer in the crime. According to the evidence at trial, Dancer and Gomaz wanted to confront the victim over her pursuit of proceedings removing Dancer's children from Dancer's home. The parties believed that the victim would not open the door if she saw Dancer or Gomaz. In Gulan's version of the events, he therefore knocked on the victim's door to assist Dancer and Gomaz in gaining entry to the victim's home. Gulan indicated that Dancer and Gomaz then entered the home, after which Gomaz strangled and sexually assaulted the victim. Testimony from other witnesses indicated that Gulan knew that Dancer wanted the victim killed, that he entered the victim's home with Gomaz and Dancer, and that, like Gomaz, he assaulted the victim.

¶4 Gulan was sixty-three years old at the time of sentencing. He argues that by rendering him ineligible for parole until he is 103 years old, the trial court essentially sentenced him to life imprisonment without the possibility of parole.

¹ All references to the Wisconsin Statutes are to the 2003-04 version.

He contends that the sentence is unduly harsh and excessive and is not supported by an adequate reasoning process.

¶5 Section 973.014(1)(b) grants a trial court discretion to impose a parole eligibility date beyond a defendant's expected lifetime. *State v. Setagord*, 211 Wis. 2d 397, 401, 565 N.W.2d 506 (1997). We review a decision setting a parole eligibility date under an erroneous exercise of discretion standard. *See id.* at 416. The factors that a trial court considers when determining parole eligibility are the same factors that are considered when imposing sentence. *Id.*

¶6 In *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, the Wisconsin Supreme Court revitalized sentencing jurisprudence but made no momentous changes.² *State v. Stenzel*, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20. Sentencing remains a discretionary decision for the trial court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *Id.*, ¶7. When the exercise of discretion has been demonstrated, appellate courts have a strong policy against interference with that discretion. *Id.* A trial court's sentencing decision is generally afforded a strong presumption of reasonability because that court is best suited to consider the relevant factors and the defendant's demeanor. *Id.*

¶7 To properly exercise its discretion, a trial court must provide a rational and explainable basis for the sentence. *Id.*, ¶8. It must specify the

² As this court recently stated: "The evil *Gallion* sought to remedy was the mechanistic application of the three sentencing factors, in which a circuit court simply described the facts of the case, mentioned the three sentencing factors, and imposed a sentence." *State v. Fisher*, 2005 WI App 175, ¶22, ___ Wis. 2d ___, 702 N.W.2d 56, *review denied*, 2005 WI 136, ___ Wis. 2d ___, 703 N.W.2d 378 (No. 2004AP1289-CR), and 2005 WI 136, ___ Wis. 2d ___, 703 N.W.2d 379 (No. 2004AP2488-CR).

objectives of the sentence on the record, which include, but are not limited to, protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence of others. *Id.* “It must identify the general objectives of greatest importance, which may vary from case to case.” *Id.* It must also identify the factors it considered in arriving at the sentence and must indicate how those factors fit the objectives and influenced the sentencing decision. *Gallion*, 270 Wis. 2d 535, ¶43.

¶8 The primary sentencing factors that a trial court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *State v. Davis*, 2005 WI App 98, ¶13, 281 Wis. 2d 118, 698 N.W.2d 823. Other factors which may be relevant include the defendant’s past record or history of undesirable behavior patterns; the defendant’s personality, character and social traits; the presentence investigation report; the vicious or aggravated nature of the crime; the degree of the defendant’s culpability; the defendant’s demeanor before the court; the defendant’s age, educational background and employment history; the defendant’s remorse, repentance and cooperation; the defendant’s need for close rehabilitative control; and the rights of the public. *Gallion*, 270 Wis. 2d 535, ¶43 & n.11. The trial court need not discuss all of these secondary factors, but rather only those relevant to the particular case. *See id.* The weight to be given each of the sentencing factors remains within the wide discretion of the trial court. *Stenzel*, 276 Wis. 2d 224, ¶9.

¶9 Gulan contends that the trial court gave too much weight to the gravity of the crime and failed to consider his background and character. In support of this argument, he points out that he had no juvenile or adult record, does not have drug or alcohol problems, maintained regular employment during most of his adult life, and lived a law-abiding existence for the thirteen years after

this crime. He also relies on his age at the time of sentencing and the portions of the evidence that supported his claim that he did not actively participate in the murder or assault. Finally, he contends that the trial court failed to explain why incarceration until 2044 was the minimum period necessary to address his role in the crime.

¶10 Although a trial court is required to impose the minimum amount of custody consistent with the appropriate sentencing factors, “minimum” does not mean “exiguously minimal,” or insufficient to accomplish the goals of the criminal justice system. *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483, *review denied*, 2004 WI 114, 273 Wis. 2d 655, 684 N.W.2d 136 (No. 2002 AP1431-CR). Moreover, when this court reviews a sentence, we look to the entire record, including the trial court’s statements at sentencing and the reasons given by the trial court in denying postconviction relief. *See State v. Santana*, 220 Wis. 2d 674, 683-84, 584 N.W.2d 151 (Ct. App. 1998). Examining those materials here, we conclude that no basis exists to disturb the sentence.

¶11 At sentencing, the trial court expressly acknowledged Gulan’s positive attributes, including his lack of a criminal record, his employment history, his military record, and the fact that he had generally lived in a law-abiding manner. However, it concluded that Gulan had a history of lying about the case and was lying at the sentencing hearing when he denied involvement in the crime. The trial court also concluded that Gulan’s sentence should not be lessened based on his remorse, noting that, by his own admission, he told people about his involvement in the case only because he was attempting to escape from problems in Mississippi.

¶12 Most significantly, the trial court concluded that Gulan's positive attributes were outweighed by the enormity of the crime. In making this determination, it considered Gulan's culpability, stating in its postconviction order that it did not believe he remained outside while the others killed the victim. The trial court also noted that even accepting Gulan's version of the events, he brought about the commission of the crime by knocking on the victim's door when he knew that the victim would not open the door for Gomaz or Dancer.

¶13 In conjunction with considering the severity of the crime, the trial court also concluded that the victim's family and the public were entitled to expect that he would remain incarcerated for the remainder of his life. In addition, it reasoned that a sentence commensurate with the seriousness of the offense served the needs of the public and protected it from the breakdown of law that would result if the courts failed to adequately respond to violent offenses like this one.

¶14 Although the trial court did not treat Gulan's age and life expectancy as relevant factors mitigating the sentence to be imposed on him, it was not required to do so. *See Stenzel*, 276 Wis. 2d 224, ¶¶13, 17. It was entitled to conclude that the gravity of the offense outweighed all other considerations and to impose a parole eligibility date that ensured Gulan's confinement for a period of time commensurate with the crime's seriousness, regardless of whether it resulted in imprisonment for the remainder of Gulan's life. *See id.*, ¶20. Based on its conclusion that the severity of the offense compelled a lengthy sentence, the trial court also reasonably concluded that Gulan's rehabilitative needs and the low risk he posed of committing a new crime were irrelevant to the disposition at sentencing.

¶15 Because the trial court discussed the relevant sentencing factors and applied them in a reasoned and reasonable manner, no basis exists to conclude that it failed to provide an adequate explanation for the sentence. We also reject Gulan's argument that the sentence is unduly harsh and excessive. A defendant may prevail on such a claim only when the sentence is so excessive, unusual, and 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. *Id.*, ¶21. The evidence in this case indicated that Gulan participated in a brutal assault and murder, assisting his friends in seeking revenge against the victim for her performance of her duties as a child protection social worker. Based on the brutality of the crime and the motive behind it, no basis exists to conclude that incarceration for the remainder of Gulan's life violates the judgment of reasonable people concerning what is right.³

By the Court.—Judgment and order affirmed.

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

³ In addition, as noted by the trial court, Gulan has already enjoyed an unwarranted thirteen years free from incarceration based upon his concealment of his participation in this crime. The trial court reasonably concluded that he should not benefit from his concealment of the crime by now claiming that he is too old to be incarcerated for the period set by the trial court.

