

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 19, 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 Nos. 2006AP568-CR
2006AP569-CR**

**Cir. Ct. Nos. 2000CF133
2005CF5**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHAWN M. MARTIN,

DEFENDANT-APPELLANT.

APPEALS from a judgment and orders of the circuit court for Waupaca County: JOHN P. HOFFMANN, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Shawn Martin appeals a judgment convicting him of burglary, an order reconfining him to the entire remaining portion of his

extended supervision on a prior conviction, and orders denying motions for sentence modification in each case. We affirm for the reasons discussed below.

BACKGROUND

¶2 Martin entered a no-contest plea in 2000 to a charge of being party to the crime of operating a vehicle without the owner's consent. The court sentenced Martin to two years of initial confinement and three years of extended supervision. Martin was reconfined on that case for ten months in 2003.

¶3 In January of 2005, Martin committed a burglary to which he entered another no-contest plea and for which his extended supervision on the charge of operating a vehicle without the owner's consent was revoked for a second time. The sentencing hearing on the burglary charge was combined with the reconfinement hearing on the prior case.

¶4 The trial court sentenced Martin to the entire remaining time on the reconfinement case and to three years of initial confinement and four years of extended supervision on the burglary case. After his motions for sentence modification were denied, Martin filed these consolidated appeals. We will discuss the relevant facts in more detail in the course of our discussion of the issues raised on appeal.

DISCUSSION

Burglary Sentence

¶5 Sentence determinations are accorded a presumption of reasonableness and will not be set aside unless the trial court has erroneously exercised its discretion. *State v. Schreiber*, 2002 WI App 75, ¶7, 251 Wis. 2d 690,

642 N.W.2d 621. In order to properly exercise its discretion, the trial court should discuss relevant factors such as the severity of the offense and character of the offender and relate them to sentencing objectives such as the need for punishment, protection of the public, general deterrence, rehabilitation, restitution, or restorative justice. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The trial court may decide what weight to give each factor, however. *Schreiber*, 251 Wis. 2d 690, ¶8. Furthermore, when the trial court fails to adequately explain the reasons for the sentence it has imposed, we are obliged to search the record to determine whether the sentence could be sustained in the exercise of proper discretion. *McCleary v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971). Therefore, in order to demonstrate a misuse of discretion, a defendant must show that the record contains an unreasonable or unjustifiable basis for the trial court's action. *Schreiber*, 251 Wis. 2d 690, ¶9.

¶6 Martin first challenges his sentence on the burglary conviction on the grounds that the court failed to give adequate consideration to certain mitigating factors. We disagree with that characterization. The court acknowledged a number of mitigating factors such as the non-violent nature of the current offense and Martin's deteriorating health, but offset them against a number of factors it considered to be aggravating, such as the fact that the family was home at the time of the burglary and that Martin had failed to take full responsibility for his actions.¹ The court went on to emphasize several times that the need to protect the public was the overriding sentencing objective in this case.

¹ Martin also attempts to challenge the court's determination that he did not take responsibility for his actions. That was a factual finding based upon credibility, however, which this court will not disturb.

The court further explained what led it to that assessment, noting that Martin posed a high risk to reoffend based on his prior record of four felonies and three misdemeanors, plus the fact that he had committed the instant offense while on supervision. The court then concluded that the combination of an intermediate offense severity with a high risk to reoffend warranted a mid-length sentence with initial confinement in the three-to-five-year range according to the sentencing guideline matrix. Thus, we are satisfied that the court did consider the mitigating factors cited by Martin; it simply chose not to give them as much weight as Martin would have liked.

¶7 Martin next claims that the trial court erred in considering a number of the same factors from the matrix to justify an upward departure from the matrix, and similarly contends that there were no facts of record justifying an upward departure from the matrix. These arguments are flawed in several respects. First and foremost, the trial court did not depart upward from the matrix. The matrix recommended a confinement period of three to five years, and the court imposed the lowest end of that range: three years of initial confinement.² The only “upward departure” was from the parties’ recommendations, which the court was not bound to follow. Second, there is no reason the court could not weigh certain guideline factors more than others, or consider certain facts of record relevant to more than one factor. That is the essence of discretionary decision making.

² Martin seems to be confusing the term “confinement,” which refers to the initial confinement portion of a bifurcated sentence, with “imprisonment,” which refers to the total length of a bifurcated sentence, including initial confinement and extended supervision. The maximum guideline matrix figure of 7-1/2 years “confinement” for an aggravated offense with high risk of reoffense plainly corresponds to the maximum initial confinement time of 7-1/2 years for a Class F felony.

Finally, by statute, a deviation from the sentencing guidelines does not provide a basis for appeal. WIS. STAT. § 973.017(10).³

Reconfinement Order

¶8 Martin next challenges his reconfinement sentence as excessive, claiming that the court failed to discuss relevant factors from the initial sentencing proceeding. However, we treat a reconfinement proceeding as a continuation of prior sentencing proceedings, and review them on a global basis. *State v. Jones*, 2005 WI App 259, ¶10, 288 Wis. 2d 475, 707 N.W.2d 876. Therefore, the circuit court need not explicitly discuss factors which it had already addressed in prior proceedings. *Id.*

¶9 Here, the trial court properly focused on what had changed since the last proceeding—namely, that Martin had violated the terms of his extended supervision for a second time, and that the latest offense was a serious one. The court further noted that there was no need to withhold any remaining time for supervision on the reconfinement case, because there would be a term of supervision on the burglary case. We are satisfied that the court’s discussion adequately explains why it imposed the sentence it did.

¶10 Having concluded that the trial court did not erroneously exercise its sentencing discretion, we further conclude that it properly denied Martin’s postconviction motion for sentence modification, and that the sentence was not so excessive as to shock the conscience.

³ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

By the Court.—Judgment and orders affirmed.

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

