

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 18, 2007**

David R. Schanker  
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. 2006AP2974-CR**

**Cir. Ct. No. 2005CF3680**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RICHARD MICHAEL ZUNAC,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Richard Michael Zunac appeals from a judgment of conviction and postconviction order. The only issue on appeal is whether the circuit court properly exercised its sentencing discretion. We conclude that it did. We affirm.

¶2 Zunac pled guilty to one count of second-degree reckless homicide while armed, a Class D felony. *See* WIS. STAT. §§ 940.06(1), 939.63 (2005-06). According to the criminal complaint, Zunac shot and killed the victim in an alley following an altercation. He faced a maximum penalty of twenty-five years' imprisonment and a \$100,000 fine. The court imposed a bifurcated term comprised of 114 months' imprisonment and seventy-two months' extended supervision.

¶3 On appeal, Zunac contends that the court did not give sufficient weight to his acceptance of responsibility, his remorse, and the nonviolent nature of his prior convictions. He also suggests that the court erred in disregarding the viability of his self-defense claim.

¶4 This court will uphold a sentence unless the circuit court erroneously exercised its discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We presume the circuit court acted reasonably, and the defendant must show that the court relied upon an unreasonable or unjustifiable basis for its sentence. *State v. Borrell*, 167 Wis. 2d 749, 782, 482 N.W.2d 883 (1992).

¶5 The court must specify the important objectives of its sentence. *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. These vary from case to case, but may include the protection of the community, punishment, rehabilitation, and deterrence. *Id.* The circuit court's obligation is to consider the important facts relevant to the chosen objectives and exercise its discretion in imposing a reasonable sentence. *See id.*

¶6 The court should consider the primary factors of "gravity of the offense, the character of the offender, and the need for protection of the public." *State v. Lechner*, 217 Wis. 2d 392, 421, 576 N.W.2d 912 (1998). It may also

consider a wide variety of additional factors. *See State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984). The circuit court need discuss only the relevant factors in each case. *State v. Echols*, 175 Wis. 2d 653, 683, 499 N.W.2d 631 (1993). The weight the circuit court assigns to each relevant factor is a discretionary determination. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We adhere to a strong public policy against interference with that discretion. *Gallion*, 270 Wis. 2d 535, ¶18.

¶7 Here, the court selected protection of the community and Zunac's need for rehabilitation as the primary objectives of the sentence. In regard to community protection, the court particularly stressed the danger posed by individuals who arm themselves and take the law into their own hands. Regarding rehabilitative needs, the court discussed Zunac's sporadic employment record, substance abuse issues, mental health treatment history, and limited skills. The court also considered deterrence, observing that events such as this happen too often in the city, leaving loss and unhappiness behind.

¶8 The court discussed Zunac's criminal record. It acknowledged that his prior violations were less serious than some and did not include felony convictions. The court further took into account the representations made by Zunac's family regarding his character. The court thus appropriately considered relevant mitigating factors. *See id.*, ¶43. It balanced these against Zunac's lack of success in his prior correctional experiences, noting that he was on supervision at the time of the homicide. *See Harris*, 119 Wis. 2d at 623 (past record and undesirable behavior patterns are appropriate sentencing considerations).

¶9 The court considered the presentence report and the report writer's opinion that Zunac failed to show remorse. *See id.* (presentence investigation an

appropriate consideration). The court did not adopt that opinion, however. Rather, it observed that this issue appeared resolved, in apparent reference to Zunac's apology and statement of regret during the sentencing proceeding.

¶10 Zunac urged the court to consider his actions as mitigated by a need to defend himself and his girlfriend, but the court viewed as more significant Zunac's culpability in failing to retreat. The court noted that Zunac had armed himself in advance and shot at the victim multiple times when he should have called the police. While the court did not weigh the facts as Zunac hoped, the determination of what is relevant at sentencing lies within the discretion of the circuit court. See *Stenzel*, 276 Wis. 2d 224, ¶17.

¶11 The court concluded that the case required imprisonment and that probation was not an alternative, particularly in light of Zunac's prior failure on supervision. See *State v. Harvey*, 2006 WI App 26, ¶48, 289 Wis. 2d 222, 710 N.W.2d 482 (the circuit court may reject probation if it determines that confinement is necessary to protect the public). It further concluded that Zunac's need for rehabilitation and his prior history required a moderate to substantial term of extended supervision.

¶12 "[T]he exercise of discretion does not lend itself to mathematical precision." *Gallion*, 270 Wis. 2d 535, ¶49. The sentencing court must explain the general range of the sentence, but not the precise term imposed. *Id.* Here, the court explained the general range of the sentence, choosing the term in light of Zunac's rehabilitative needs on one hand and the need to deter others and protect the community on the other.

¶13 The record reflects that the court considered relevant factors, both mitigating and aggravating, in pronouncing sentence. While Zunac is dissatisfied

with the court’s choice of factors and the weight it assigned to them, the court provided a “rational and explainable basis” for its sentence. *Id.*, ¶39 (citation omitted). Accordingly, we uphold the court’s discretionary decision. *See id.*

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

