

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 9, 2009**

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. 2008AP2258-CR**

Cir. Ct. No. 2007CF3410

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RONALD J. LEICHER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Ronald J. Leicher appeals from a judgment of conviction and a postconviction order. The only issue on appeal is whether the circuit court properly exercised its sentencing discretion. We affirm.

## BACKGROUND

¶2 Leicher pled no contest to substantial battery. *See* WIS. STAT. § 940.19(2) (2007-08).<sup>1</sup> The record reflects that Leicher struck the victim with a baseball bat during a dispute in a tavern. The victim sustained many injuries. The circuit court imposed three years and six months of imprisonment, the statutory maximum, bifurcated as eighteen months of initial confinement and twenty-four months of extended supervision. Leicher filed a postconviction motion for sentence modification that the circuit court denied without a hearing. Leicher appeals.

## DISCUSSION

¶3 Leicher contends that the circuit court erroneously exercised its sentencing discretion by imposing a maximum term of imprisonment. Leicher reviews the various aggravating and mitigating factors that the circuit court discussed, but concludes that in each instance the circuit court “failed to explain the need for the maximum sentence.”<sup>2</sup>

¶4 Sentencing lies within the circuit court’s discretion, and our review is limited to considering whether discretion was erroneously exercised. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

<sup>2</sup> Substantial battery is a Class I felony, carrying a statutory maximum penalty of a \$10,000 fine, imprisonment not to exceed three years and six months, or both. *See* WIS. STAT. §§ 940.19(2), 939.50(3)(i). We observe that the circuit court did not require Leicher to pay a fine in any amount.

When a criminal defendant challenges the sentence imposed by the circuit court, the defendant has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue. When reviewing a sentence imposed by the circuit court, we start with the presumption that the circuit court acted reasonably. We will not interfere with the circuit court's sentencing decision unless the circuit court erroneously exercised its discretion.

*State v. Lechner*, 217 Wis. 2d 392, 418-19, 576 N.W.2d 912 (1998) (citations and footnote omitted).

¶5 The circuit court must consider the primary sentencing factors of “the gravity of the offense, the character of the defendant, and the need to protect the public.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See id.* The court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20.

¶6 The sentencing court must “specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Gallion*, 270 Wis. 2d 535, ¶40. Further, the circuit court should fashion a sentence that calls for “the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *Id.*, ¶23 (citation omitted).

¶7 The circuit court fully complied with its obligation to exercise discretion in this case. The court addressed the nature of the offense, describing it as “very aggravated.” In reaching that conclusion, the court reviewed in some detail the physical harm and collateral consequences that the victim suffered, including skull fractures, a broken neck, broken facial bones, a broken jaw, a protracted hospital stay, severe TMJ complications, inability to take over a family business, and substantial medical bills. The circuit court observed: “there’s physical damage, emotional damage, financial damage, so this is an extremely serious matter.”

¶8 In considering the need to protect the public, the circuit court discussed Leicher’s prior battery convictions, and it described Leicher as failing to take sufficient notice of the violent tendencies that those convictions signaled. The court expressed concern that Leicher “has some difficulty conforming his conduct to that of a law-abiding citizen.”

¶9 The circuit court also assessed Leicher’s character and rehabilitative needs. The court acknowledged Leicher’s empathy for the victim and expressions of remorse for committing the offense. Further, the court recognized that Leicher enrolled in alcohol treatment and anger management counseling after the offense. The court observed, however, that Leicher had a history of alcohol abuse, and the court carefully explained why Leicher’s involvement in treatment provided insufficient assurance that he had fully addressed his rehabilitative needs: “[h]e has used alcohol in his life over a long period of time ... and that doesn’t go away instantly because he’s going to AA meetings and he’s in a treatment program. He has had treatment programs before and it hasn’t kept him from getting back involved in alcohol.”

¶10 The circuit court identified punishment, protection of the public, and rehabilitation as the primary objectives of its sentence, and it linked those objectives to the maximum term of imprisonment imposed. *See id.*, ¶46 (court should link component parts of sentence to identified objectives). The court explained that probation would unduly depreciate the seriousness of the matter. In the court’s view, Leicher required “an incentive to correct his conduct.” Additionally, the court determined that a substantial period of extended supervision would encourage Leicher to “work diligently on his rehabilitation and cooperate with all of the opportunities that supervision provides.”

¶11 The circuit court had an opportunity to explain its sentencing rationale further when challenged by Leicher’s motion for sentence modification. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). In the postconviction order, the court confirmed its determination that a maximum sentence is warranted in this case.

¶12 The circuit court emphasized that Leicher’s conduct was “extremely serious and aggravated,” and that Leicher “turned what could have been an ordinary fist fight into something far more serious by introducing a baseball bat into the situation.” Additionally, the court noted that Leicher’s violent history demonstrated his substantial rehabilitative needs. The court explained that the gravity of Leicher’s conduct and the extent of his rehabilitative needs “far outweighed” the significance of the mitigating factors in Leicher’s favor. Leicher disagrees with this assessment, but the weight to be accorded to each factor lies “particularly within the wide discretion of the sentencing judge.” *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶13 The circuit court provided a thorough justification for imposing the maximum term of imprisonment. As the circuit court’s written and oral remarks demonstrate, the court viewed the offense as extremely aggravated and the court concluded that Leicher required a maximum sentence “to punish [him] while he is undergoing rehabilitation in a confined setting.” The court’s sentencing decision constitutes a proper exercise of discretion. See *McCleary v. State*, 49 Wis. 2d 263, 275, 182 N.W.2d 512 (1971) (maximum sentence appropriate for a more aggravated breach of the law). Therefore, we affirm.

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

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

