

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 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. 2008AP2596-CR

Cir. Ct. No. 2007CF500

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TANESHEAH VERDICE ROSS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM W. BRASH, III, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Following a court trial, Tanesheah Verdice Ross was convicted of one count of endangering safety by use of a dangerous weapon,

contrary to WIS. STAT. § 941.20(2)(a) (2007-08).¹ She was sentenced to thirty-two months' initial confinement and forty-eight month' extended supervision—eighty months' imprisonment out of a possible total 120-month sentence. She moved for resentencing, but the court denied her motion. On appeal, Ross only argues that the court failed to appropriately exercise its sentencing discretion. We reject Ross's contention and affirm the judgment and order.

¶2 Karitta Phillips alleged that Ross came to her home, looking for Phillip's cousin, Michael Fair. When Phillips told Ross she did not know where Fair was, Ross became agitated. As Phillips closed the door on Ross, Ross shot a small handgun into the home. Neither Phillips nor two other individuals in the home were injured. A spent shell casing was found outside the home, and a bullet was found inside. Ross testified in her own defense, denying that she knew Fair and asserting that she was being framed. The court rejected Ross's testimony, convicted her, and sentenced her. Ross moved for resentencing, arguing the trial court had erroneously exercised its sentencing discretion. The court denied the motion and Ross appeals.

¹ WISCONSIN STAT. § 941.20(2)(a) provides that whoever “[i]ntentionally discharges a firearm into a vehicle or building under circumstances in which he or she should realize there might be a human being present therein” is guilty of a Class G felony. When the court delivered its verdict, it stated it was finding Ross guilty of “endangering safety by *reckless* use of a firearm.” (Emphasis added.) However, the complaint appropriately charged Ross; the court reviewed the appropriate jury instruction, WIS JI—CRIMINAL 1324; the judgment of conviction notes the correct statute; and, at sentencing, the court was advised of the correct maximum term of initial confinement for a Class G felony. Neither the State nor Ross objected to the mischaracterization at any point below, and Ross does not point out the error on appeal. We therefore conclude the error is both harmless and has been waived.

All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶3 It is well-settled that sentencing is committed to the circuit court’s discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Our review is limited to determining whether the court erroneously exercised that discretion. *See id.* The sentencing court is generally afforded a strong presumption of reasonability, and if our review reveals that discretion was properly exercised, we follow “a consistent and strong policy against interference” with the circuit court’s sentencing determination.” *Id.*, ¶18 (quoted source omitted).

¶4 In exercising its sentencing discretion, a circuit court is to specify, on the record, the sentencing objectives it deems relevant. *See id.*, ¶40. These objectives generally include the protection of the public, punishment or rehabilitation of the defendant, and deterrence to others, and the court should identify the objective or objectives of greatest importance. *Id.*, ¶¶40-41. The court should also identify the various factors it considered in arriving at the sentence and how those factors relate back to the objectives. *See id.*, ¶43 (listing multiple factors).

¶5 Here, the court determined that each of the sentencing objectives needed to be considered. It concluded that the community needed to be protected, as it had a right to be free from behavior like Ross’s; that there should be both a punishment and deterrent component to the sentence; and that Ross had some rehabilitative needs, including drug and mental health issues, that should be addressed.

¶6 The court then discussed multiple aggravating and mitigating factors. It noted that Ross did have employment and that she had cooperated with counsel. However, it also observed that even after its verdict, Ross continued to

deny responsibility for the offense. The court also considered that Ross had discharged a firearm in the direction of another person, that other individuals were also in the home, and that the home had sustained property damage. The court characterized Ross's behavior as "aggravated" and "egregious" and commented that she was lucky no one was injured by her actions.² The court also observed Ross's criminal record.

¶7 Ross asserts the circuit court failed to appropriately exercise its discretion because the reasons the court gave for its sentence "were not so clearly explained, not linked to relevant facts, and do not appear to be the product of a process of reasoning" Further, she contends, "specific reasons for that length of time are stated nowhere in the record." In short, Ross asserts that the length of her sentence is not appropriately linked to the sentencing factors and objectives.

¶8 The difficulty with Ross's argument is that "the exercise of discretion does not lend itself to mathematical precision." *Id.*, ¶49. A sentencing court is not required "to provide an explanation for the precise number of years chosen." See *State v. Taylor*, 2006 WI 22, ¶30, 289 Wis. 2d 34, 710 N.W.2d 466. "[W]e do not expect circuit courts to explain, for instance, the difference between sentences of 15 and 17 years." *Gallion*, 270 Wis. 2d 535, ¶49. Nor do we expect the circuit courts to construct a sentence by identifying a factor and attributing a specific portion of the sentence to that factor.

² For this reason, the court concluded probation was inappropriate and some confinement was necessary to protect the public. See *State v. Gallion*, 2004 WI 42, ¶44, 270 Wis. 2d 535, 678 N.W.2d 197.

¶9 Ross’s sentence is “not ‘so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.’” *Taylor*, 289 Wis.2d 34, ¶31 (quoting *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457 (1975)). The court identified proper objectives, considered relevant factors, and imposed a sentence within a range authorized by law. Ross has not shown any “unreasonable or unjustified basis” for her sentence that would cause us to question its propriety. *See id.*, ¶18 (quoted source omitted).

By the Court.—Judgment and order affirmed.

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

