

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 22, 2011

A. John Voelker
Acting 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. 2010AP2798-CR
2010AP2802-CR**

**Cir. Ct. Nos. 2009CF5181
2009CF5345**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY G. MAYER, JR.,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jeffrey G. Mayer, Jr. appeals from judgments of conviction entered upon his guilty pleas to four counts of robbery with threat of

force, contrary to WIS. STAT. § 943.32(1)(b) (2009-10).¹ He also appeals from a postconviction order denying his motion to modify his sentence. On appeal, Mayer contends that the circuit court erroneously exercised its sentencing discretion. We disagree and affirm.

BACKGROUND

¶2 The charges against Mayer stem from a string of robberies he committed at several Milwaukee-area banks and a restaurant. Mayer committed the robberies over the course of forty-eight hours.

¶3 Pursuant to a plea agreement, Mayer pled guilty to four counts of robbery with threat of force. For each of the four counts, the circuit court sentenced Mayer to six years' imprisonment comprised of three years' initial confinement and three years' extended supervision. The first sentence was ordered to run concurrently to a revocation sentence that Mayer was serving with the remaining sentences to run consecutively.

¶4 Mayer filed a postconviction motion seeking sentence modification. The circuit court denied the motion, and this appeal followed.

DISCUSSION

¶5 Sentencing lies within the circuit court's discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise

¹ The charges against Mayer stem from two separate lower-court cases. On Mayer's motion, this court consolidated his appeals for briefing and dispositional purposes.

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence.” *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. We presume that the circuit court acted reasonably. *Gallion*, 270 Wis. 2d 535, ¶18. “The defendant has the burden of showing that the ‘sentence was based on clearly irrelevant or improper factors.’” *Id.*, ¶72 (citations omitted).

¶6 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 circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See Gallion*, 270 Wis. 2d 535, ¶43 & n.11.

¶7 The circuit 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.

¶8 Sentencing discretion must be exercised on a “rational and explainable basis.” *Id.*, ¶39 (citation and one set of quotation marks omitted). When we review a sentencing decision, we consider both the circuit court’s explanation given during the sentencing proceeding and any additional explanation that the circuit court provided in response to the defendant’s postconviction motion for relief from the sentence. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). We recognize, however, that the amount of explanation needed for a sentencing decision varies from case to case. *Gallion*, 270 Wis. 2d 535, ¶39.

¶9 Mayer asserts that in sentencing him, the circuit court applied the wrong standard when it analyzed aggravating and mitigating factors “by requiring the mitigating factors to outweigh the seriousness of the offense before they could have any effect on the sentence to be imposed.” The record, however, reveals an appropriate exercise of sentencing discretion.

¶10 First, the circuit court identified its sentencing goals, which included restitution, punishment and deterrence, and rehabilitation. The court explained that to meet these goals, it considered the seriousness nature of the crime, the community’s needs, and Mayer’s character and needs.

¶11 In addressing the seriousness of the crimes and the impact on the community, the circuit court noted that these were robberies where, although the court knew weapons were not used, the victims did not. Relating to the bank robberies, the court stated, “[i]t is not the bank, it is the people” that are affected. The court reflected on the fact that Mayer committed four robberies in forty-eight hours and afterward got on a train and left town.

¶12 The circuit court went on to consider Mayer’s character. It pointed out that Mayer had been given breaks in the system and that probation was not working.² The court acknowledged Mayer’s serious drug problem along with all of the talents Mayer was wasting. The court also accounted for various mitigating factors:

² Mayer was on probation at the time these robberies were committed. After his arrest, he was revoked and was serving time on that sentence at the time of his sentencing in the cases underlying this appeal. His past record includes convictions for theft, possession of marijuana, possession of an explosive device, and forgery.

Mental health problems, suicide, diagnosis, I have all of those things; the question is, does your remorse and acceptance of responsibility and your drug problem and your mental health problem, does that all outweigh the terrible things you did on November 7 and 8? Because if it did, we could give you a lighter sentence. I don't think it did.

¶13 It is this statement that Mayer takes issue with, asserting: “Mitigating factors such as those acknowledged by the [circuit court] at sentencing are not required to *outweigh* the seriousness of the offense before they can operate to mitigate a sentence.” (Bolding omitted.)

¶14 We are not convinced that the circuit court's statement reflects an erroneous exercise of its sentencing discretion. 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. *Stenzel*, 276 Wis. 2d 224, ¶16; *see also Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). As the court explained in its order denying Mayer's postconviction motion, “the record shows that [the circuit] court considered the mitigating factors in this case but did not assign them any significant weight because of the seriousness of the defendant's crimes.” We see no error in this assessment.

¶15 Mayer suggests that his sentences are unduly harsh. We disagree. “A sentence is unduly harsh when it is ‘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.’” *State v. Prineas*, 2009 WI App 28, ¶29, 316 Wis. 2d 414, 766 N.W.2d 206 (citation omitted). Here, Mayer faced a sixty-year maximum sentence that could have been comprised of forty years' initial confinement and twenty years' extended supervision. *See* WIS. STAT. §§ 943.32(1)(b),

939.50(3)(e), 973.01(2)(b)5. & (d)4. The circuit court imposed a term of imprisonment that required Mayer to serve approximately one-third of the available prison time in initial confinement. The sentence is well within the maximum allowed and thus is neither excessive nor shocking. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

¶16 Mayer's sentence is the product of a proper exercise of discretion. Accordingly, there was no basis for granting the postconviction motion for sentence modification, and there is no reason for this court to reverse the judgment or order.

By the Court.—Judgments and order affirmed.

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

