

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 30, 2013**

Diane M. Fremgen  
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. 2013AP131-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2010CF389

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JIMMY L. WILLIAMS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Walworth County: ROBERT J. KENNEDY and JOHN R. RACE, Judges.  
*Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¶1 PER CURIAM. Jimmy L. Williams appeals from a judgment of conviction and an order denying his postconviction motion.<sup>1</sup> He contends that the circuit court erroneously exercised its discretion at sentencing by placing too much emphasis on his conduct in another case. We reject Williams’ claim and affirm the judgment and order.

¶2 Williams was convicted following a guilty plea of robbery with use of force and misdemeanor battery, both as a party to a crime. The charges stemmed from allegations that Williams and two others beat a man and took his property at an apartment complex in Whitewater.

¶3 Prior to his sentencing, Williams was investigated regarding a homicide that occurred in Milwaukee county. Although Williams told police that he was at his mother’s house with his cell phone on the day of the homicide, telephone records placed his cell phone at the location of the homicide and the homicide victim’s vehicle. The State subsequently charged Williams with felony bail jumping and misdemeanor obstructing.

¶4 The State provided the circuit court with information regarding the Milwaukee county case before Williams’ sentencing. The court acknowledged that the information “change[d] the whole picture” about Williams’ personality, character, and social traits. Without it, the court viewed the case as a probation case with conditional jail time. With it, the court viewed the case as a prison case, as it showed that Williams had demonstrated a pattern of criminal character and behavior. In the end, the court imposed an aggregate sentence of eight years of

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<sup>1</sup> The Honorable Robert J. Kennedy entered the judgment of conviction. The Honorable John R. Race entered the order denying Williams’ postconviction motion.

imprisonment, consisting of four years of initial confinement and four years of extended supervision.

¶5 Williams eventually pled guilty to the felony bail jumping in the Milwaukee county case, and the State dismissed the misdemeanor obstructing. That same day, the State charged Williams with felony murder.<sup>2</sup> A jury later found him not guilty of that offense.

¶6 Williams filed a postconviction motion to modify his sentence in the present case. Following a hearing on the matter, the circuit court denied his motion. Williams now appeals.

¶7 On appeal, Williams contends that the circuit court erroneously exercised its discretion at sentencing by placing too much emphasis on his conduct in the Milwaukee county case. Accordingly, he asks to be resentenced.

¶8 Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We afford a strong presumption of reasonability to the circuit court's sentencing determination because that court is best suited to consider the relevant factors and demeanor of the defendant. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76.

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<sup>2</sup> In addition to the telephone records, there was other evidence that implicated Williams in the homicide. For example, according to one codefendant, Williams had gone over to the victim's house with him the night before the homicide and "cased the joint." According to another codefendant, Williams had worked for the victim and said that he "would be the type of person you can hit, and he has \$2,000, et cetera." At sentencing, the circuit court described the evidence against Williams as strong. However, it recognized that a jury might not be able to find him guilty beyond a reasonable doubt.

¶9 “[T]o properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence.” *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. The primary sentencing factors that a court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Ziegler*, 289 Wis. 2d 594, ¶23. The weight to be given to each sentencing factor is within the discretion of the court. *Id.* The court may consider other relevant factors as well, including the defendant’s personality, character, and social traits. *Id.*

¶10 Here, the record reveals that the circuit court’s sentencing decision had a “rational and explainable basis.” *Stenzel*, 276 Wis. 2d 224, ¶8. The record further demonstrates that the court considered the seriousness of the offense, Williams’ character, and the need to protect the public. *Ziegler*, 289 Wis. 2d 594, ¶23. The court’s focus on Williams’ personality, character, and social traits was also appropriate. *Id.*

¶11 Although the circuit court took into account Williams’ conduct in the Milwaukee county case, it was permitted to do so under established case law. *See, e.g., State v. Leitner*, 2002 WI 77, ¶45, 253 Wis. 2d 449, 646 N.W.2d 341 (sentencing court may consider unproven and uncharged offenses and facts related to offenses for which the defendant has been acquitted); *see also State v. McQuay*, 154 Wis. 2d 116, 126, 452 N.W.2d 377 (1990) (sentencing court must consider whether crime is an isolated act or a pattern of conduct; evidence of unproven offenses may be considered for this purpose). Moreover, the court was careful not

to place too much emphasis on the conduct so that it effectively sentenced Williams for it.<sup>3</sup>

¶12 In light of the foregoing, we are satisfied that the circuit court properly exercised its discretion in sentencing Williams and denying his motion for postconviction relief. Accordingly, we affirm.

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

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

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<sup>3</sup> In its sentencing remarks, the circuit court explained, “I’m going to leave it to Milwaukee, essentially to do what they ought to do. I am not necessarily gonna sentence as if this defendant did commit that crime. That’s not my job. My job is to sentence him on this offense.”

