COURT OF APPEALS
DECISION
DATED AND FILED

September 1, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2519-CR **Cir. Ct. No. 2011CF2606**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRADLEY WAYNE PHILLIPS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: DENNIS R. CIMPL and WILLIAM S. POCAN, Judges. *Affirmed*.

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

¶1 KESSLER, J. Bradley Wayne Phillips appeals the judgment, following a jury trial, finding him guilty of six counts of failure to pay child

support. Phillips also appeals the orders denying his motion for postconviction relief and his motion for resentencing.

¶2 Phillips alleges the following errors on appeal: (1) the trial court prohibited testimony from an expert witness about whether Phillips was employable; (2) the postconviction court did not find Phillips' defense counsel ineffective for allegedly failing to present a plea offer from the State; (3) the postconviction court denied Phillips a ***Machner***[1] hearing on his multiple other allegations of ineffective assistance of counsel; and (4) the postconviction court denied Phillips' motion for resentencing. We reject all of Phillips' claims of error and affirm.[2]

BACKGROUND

¶3 On June 14, 2011, Phillips was charged with six counts of failure to provide child support, stemming from allegations that on six different spans of 120 consecutive days, Phillips failed to pay support to D.T., the mother of his minor child. Phillips was initially appointed an attorney by the State Public Defender's Office, but eventually retained his own counsel.[3]

[1] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

[2] The Honorable Dennis Cimpl presided over the trial and sentencing. The Honorable Glenn Yamahiro partially denied Phillips' motion for postconviction relief. The Honorable William Pocan presided over the ***Machner*** hearing.

[3] Attorney Gregg Novack was appointed by the State Public Defender's Office. He appeared with Phillips at the preliminary hearing on August 11, 2011. Phillips later retained Attorney Philip Atinsky, who appeared with Phillips at a scheduling conference on September 21, 2011, and remained Phillips' attorney throughout the trial.

The Pretrial Motion.

¶4 Prior to trial, the State filed a motion to exclude testimony from a psychologist, Dr. David Nichols, about whether "brain trauma," incurred after a car accident, affected Phillips' employability. The motion stated:

> [t]he defendant has given notice that he will raise an affirmative defense at trial of being unable to pay child support due to "organic brain damage," and that he will use Dr. David Nichols as an expert witness…. Unfortunately, Dr. Nichols' curriculum vitae contains no indication that he has any expertise whatsoever in the area of brain damage, brain trauma, or the physiology of the brain. He is not a medical doctor and, to the best of the State's knowledge, he has not conducted physical tests on Bradley Phillips or subjected Mr. Phillips to a brain scan.

The State also argued that Dr. Nichols' psychological evaluation of Phillips, in which Dr. Nichols diagnosed Phillips with multiple disorders related to brain trauma, was not scientifically reliable. The State conceded that Dr. Nichols testimony was generally relevant to Phillips' case, but argued that Dr. Nichols' opinions as to Phillips' employability should be excluded.

¶5 The trial court granted the State's motion, finding that the documentation provided by Phillips contained no foundation for Dr. Nichols' testimony about Phillips' employability. The court noted that Dr. Nichols' report did not discuss whether Phillips was employable; therefore, Dr. Nichols could not testify about an opinion not contained in his report.

The Trial.

¶6 The matter proceeded to trial, where several additional witnesses testified. D.T., the mother of Phillips' child, testified that she met Phillips in 1991, two years after Phillips was involved in a car accident. D.T. stated that while she

was dating Phillips, she was asked to "meet with the attorneys [handling the accident] to see if I could testify on [Phillips'] behalf, as I was his girlfriend at that time." D.T. said Phillips' family requested that D.T. tell the attorneys "[t]hat he was having memory loss and problems with daily tasks. He couldn't follow direction or instruction." D.T. stated that she saw no indication of Phillips having such struggles and refused to "lie" at Phillips' family's request. D.T. also testified that when she became pregnant with the child at issue, both Phillips and his parents asked D.T. to have an abortion. Phillips' counsel did not object to any of D.T.'s testimony.

¶7 Sergeant Brian Wall testified that in the twenty-two years that he was employed with the Village of Caledonia police, he encountered Phillips multiple times. Wall testified that he was called multiple times a year to the tavern owned by Phillips' family in Caledonia, where Phillips tended bar. Wall said that on multiple occasions, Phillips was "very intoxicated." Wall stated that he arrested Phillips once and that Phillips was so intoxicated "he couldn't even stand for the booking procedure." Wall also testified that Phillips was once the subject of a criminal investigation involving damage to property, and that Phillips was once "detained by some officers as I had gotten in a pursuit with a friend of his and they thought he was my suspect, but he was not." Phillips' counsel did not object to any of Wall's testimony.

¶8 Phillips also testified. On cross-examination, the State asked Phillips about prior convictions for failure to pay child support. Specifically, the State asked Phillips whether he claimed an inability to work or raised the issue of brain damage in those cases. Phillips stated that he had not. Defense counsel did not object during this line of questioning.

¶9 Jeffrey Phillips (Jeffrey), Phillips' brother, also testified. Prior to trial, the parties stipulated that Jeffrey had five prior convictions. The court ruled that if Jeffrey admitted to five convictions, the State could not inquire about the nature of those convictions. At trial, however, defense counsel asked Jeffrey: "[i]sn't it a fact that you have been convicted four times of a crime?" Jeffrey responded in the affirmative. On cross-examination, the State inquired about all five of Jeffrey's prior convictions. The State then asked Jeffrey whether he was convicted of five crimes, rather than four. Jeffrey responded in the affirmative.

¶10 Towards the end of the trial, the trial court asked defense counsel about his remaining witnesses. The defense stated that it intended to call B.H., the son of Phillips' current girlfriend, Jean Jenner. Defense counsel told the court that B.H. had lived with Phillips since 2003 and would testify "to the activities when his mother isn't there, how he takes care of [Phillips]." Counsel admitted that B.H.'s testimony would be similar to Jenner's, who had already testified about Phillips' struggles with memory, personal maintenance and day-to-day activities. The State objected, arguing that B.H.'s testimony would be cumulative. The trial court agreed and ruled that B.H. could not testify.

¶11 Ultimately, Phillips was convicted of all six counts. Phillips was sentenced to one year of initial confinement and two years of extended supervision on each count, consecutive to one another.

Phillips' Postconviction Motion.

¶12 Phillips filed a Motion for Postconviction Relief. He argued that the trial court erroneously excluded Dr. Nichols' testimony about whether he was employable, alleged several instances of ineffective assistance of counsel, and argued that he was sentenced based on inaccurate information. As to the

ineffective assistance of counsel claims, Phillips alleged that: (1) neither the public defender nor his retained counsel communicated a plea offer made by the State; (2) defense counsel failed to provide a sufficient foundation for Dr. Nichols' opinion that Phillips was unable to work, thus squashing his affirmative defense; (3) defense counsel failed to make multiple objections during the testimony of multiple witnesses; (4) defense counsel failed to provide an offer of proof as to B.H.'s testimony; and (5) defense counsel opened the doors to the State's inquiries about the nature of Jeffrey's prior convictions. Phillips also argued that he was entitled to resentencing, alleging that: (1) the trial court called him a "deadbeat father" at the sentencing hearing, which was inaccurate because Phillips simply did not have the money to pay child support; (2) the trial court unfairly commented on a $68,000 settlement Phillips received in 1993 that went to his parents, not his child; and (3) the trial court falsely accused Phillips of lying to the jury about social security benefits.

¶13 The trial court denied Phillips' motion on all claims except Phillips' allegation that neither defense counsel informed him of a plea offer. The court ordered a ***Machner*** hearing on that issue.

The *Machner* Hearing.

¶14 It is undisputed that the State offered Phillips a plea, though counsel, in a letter dated August 11, 2011. The letter offered Phillips a recommendation of thirty months of imprisonment and forty-eight months of extended supervision, in exchange for guilty pleas on counts one through three. Counts four through six would be dismissed and read in. The only issue at the ***Machner*** hearing was whether either defense counsel presented that offer or the letter to Phillips. Attorney Gregg Novack testified that he was appointed by the Public Defender's

Office to represented Phillips. Novack represented Phillips for approximately five weeks. Novack testified that he did not "specifically recall" receiving a plea offer letter from the State, but stated that his "normal practice" is to make a copy of the offer letter and "hand that to my client."

¶15 Attorney Philip Atinsky told the circuit court that he took over Phillips' case in September 2011 and remained Phillips' counsel until the conclusion of his trial. Atinsky said the State's letter "look[ed] familiar," but that he "can't positively say I saw this particular letter." Atinsky also said that his "practice normally would have been … [to] read it to the defendant and gone over it with him." Atinsky stated that he had no reason to believe that he would not have presented the letter to Phillips.

¶16 Phillips told the court that he did not know the State had made a plea offer until one year after he was in prison. He said if the offer had been presented to him, he would have accepted it "because if I had known it would have cut my time exposure by half … I would have gotten less time with the plea agreement even if the Court sentenced me to the maximum than I got now."

¶17 The court found no credible evidence to support the conclusion that Phillips would have accepted the plea offer at the time it was made, stating Phillips' entire defense was based on his lack of memory and his inability to work due to brain damage. The court found the testimony of both attorneys credible, stating, "I can't believe two (2) attorneys as talented as Mr. Novack and Mr. Atinsky would both have neglected to discuss the terms of the offer with their client."

¶18 This appeal follows. Additional facts are included as relevant to the discussion.

DISCUSSION

¶19 On appeal, Phillips argues that: (1) the trial court erroneously limited Dr. Nichols' testimony on the issue of Phillips' employability; (2) trial counsel was ineffective for failing to present the State's plea offer; (3) he was entitled to a ***Machner*** hearing on his numerous other allegations of ineffective assistance of counsel; and (4) he is entitled to resentencing. We address each issue.

I. The trial court did not erroneously limit Dr. Nichols' testimony.[4]

¶20 Admission of an expert witness's opinion testimony is a matter addressed to the discretion of the trial court. ***Brain v. Mann***, 129 Wis. 2d 447, 458, 385 N.W.2d 227 (Ct. App. 1986). Under WIS. STAT. § 907.02(1) (2013-14),[5] a person may give an opinion within his or her area of expertise as long as the witness is "qualified as an expert by knowledge, skill, experience, training, or education." However, a trial court has the discretion to exclude expert testimony that lacks a foundation. *See, e.g.*, ***Schleiss v. State***, 71 Wis. 2d 733, 746, 239 N.W.2d 68 (1976).

¶21 Here, the trial court excluded Dr. Nichols' testimony pertaining to Phillips' employability due to brain trauma because Dr. Nichols' report did not reach that conclusion. The report contains details of Phillips' memory struggles,

[4] Phillips mischaracterizes this argument as a ***Daubert*** issue. *See* ***Daubert v. Merrell Dow Pharm., Inc.***, 509 U.S. 579 (1993). The ***Daubert*** standard governs the admissibility of expert opinions and deals with the threshold reliability of an expert's opinion. In the present action, the parties do not dispute Dr. Nichols' qualifications or the relevancy of his testimony. Here the issue is proper foundation for Dr. Nichols' testimony as to brain trauma and employability.

[5] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

references to the 1989 car accident, and ultimate psychological diagnoses; however, the report contains no details of medical testing, medical diagnoses or conclusions about brain trauma to Phillips or his employability. The trial court correctly noted that the report "doesn't have an opinion" about Phillips' employability and fails to draw "a connection between what [Dr. Nichols] did, what the diagnosis was and his opinion." Accordingly, the trial court appropriately exercised its discretion when it concluded that defense counsel did not lay a foundation for the excluded testimony.

II. Phillips was not Denied Effective Assistance of Counsel Regarding the State's Plea Offer.

¶22 Phillips argues that both the public defender and his retained counsel were ineffective for failing to present the State's pretrial plea offer. We disagree.

¶23 To sustain a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's errors were prejudicial. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996).

¶24 An attorney's performance is not deficient unless he or she "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Strickland***, 466 U.S. at 687. To satisfy the prejudice prong, the defendant must demonstrate that counsel's deficient performance was "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." ***Id.*** In other words, there must be a showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694. A

court need not address both components of this inquiry if the defendant does not make a sufficient showing on one. ***Id.*** at 697.

¶25 Whether counsel's actions constitute ineffective assistance is a mixed question of law and fact. ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). "The trial court's determinations of what the attorney did, or did not do, and the basis for the challenged conduct are factual and will be upheld unless they are clearly erroneous." ***State v. Johnson***, 133 Wis. 2d 207, 216, 395 N.W.2d 176 (1986). The ultimate conclusion, however, of whether the conduct resulted in a violation of the defendant's right to effective assistance of counsel is a question of law for which no deference to the trial court need be given. ***State v. Harvey***, 139 Wis. 2d 353, 376, 407 N.W.2d 235 (1987).

¶26 At the ***Machner*** hearing, both Atinsky and Novack testified that they did not specifically recall receiving the State's plea offer, but that their normal practice is to present such offers to their clients. Neither attorney presented a reason as to why he would not have followed his normal practice. The postconviction court found both Atinsky and Novack credible. The court found Phillips an incredible witness, calling his allegation a case of "buyer's remorse." The court also found it unlikely that Phillips would have accepted the State's offer because his entire defense focused on his claimed unemployability. The postconviction court is the ultimate arbiter of the credibility of trial counsel and all other witnesses at a ***Machner*** hearing. *See* ***Johnson v. Merta***, 95 Wis. 2d 141, 152, 289 N.W.2d 813 (1980). In upholding the postconviction court's credibility determinations, we fail to see how either attorney performed deficiently.

III. Phillips is Not Entitled to a *Machner* Hearing on his Remaining Ineffective Assistance of Counsel Claims.

¶27 Phillips argues that the postconviction court should have granted him a ***Machner*** hearing as to the following allegations of ineffective assistance: (1) counsel's failure to lay a proper foundation for Dr. Nichols' testimony about Phillips' employability; (2) counsel's failure to make numerous objections during witness testimony; (3) counsel's incorrect statement about the number of Jeffrey's prior convictions; and (4) counsel's failure to present an offer of proof for B.H.'s proposed testimony.

¶28 A postconviction claim of ineffective assistance of counsel requires an evidentiary hearing only if the motion contains allegations of material fact that, if true, would entitle the defendant to relief. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. "However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the [postconviction] court has the discretion to grant or deny a hearing." ***Id.*** We independently determine whether the facts set forth in a postconviction motion require an evidentiary hearing. *See* ***id.*** If they do not, we review a postconviction court's decision as to whether to hold a hearing for an erroneous exercise of discretion. *See* ***id.***

¶29 Having reviewed the record, including Phillips' postconviction motion, we conclude that the postconviction court correctly denied his motion without a hearing because Phillips did not set forth sufficient facts that, if true, demonstrate that his trial counsel's performance was prejudicial.

A. Counsel's failure to lay a proper foundation.

¶30 Assuming, without deciding, that trial counsel failed to adequately develop a report containing Dr. Nichols' opinion about Phillips' employability, the record does not show that Phillips was prejudiced by this omission. Although Dr. Nichols could not expressly state his opinion that Phillips was unemployable, he provided the jury with ample details about Phillips' mental state and struggles with maintaining employment. Dr. Nichols told the jury that he examined Phillips to determine whether Phillips was eligible for social security disability benefits. Dr. Nichols discussed Phillips' inability to manage his own benefits, communicate effectively or follow instructions. Dr. Nichols stated that Phillips suffered from a significant brain injury, leading to a personality change. He also stated that Phillips had a low IQ and a memory disorder.

¶31 If the jury found this testimony credible, it was free to conclude, without Dr. Nichols' explicit opinion, that Phillips was unemployable. The jury was amply aware of Phillips' struggles. Phillips has failed to show that the inclusion of Dr. Nichols' opinion would have resulted in a different verdict. The postconviction court did not err in refusing to grant a ***Machner*** hearing on this issue.

B. Counsel's failure to make multiple objections.

¶32 Phillips argues that his trial counsel was ineffective for failing to object to the following:

- D.T.'s testimony that Phillips' family asked her to lie about the extent of his injuries;

- D.T.'s testimony that Phillips' parents asked her to have an abortion;[6]
- Sergeant Wall's testimony that he had multiple encounters with Phillips in which Phillips was intoxicated, including one arrest in which Phillips was extremely intoxicated;
- Sergeant Wall's testimony that Phillips was once the subject of a criminal investigation regarding damaged property;
- Sergeant Wall's testimony that Phillips was detained by officers because they thought he might flee; and
- Phillips' testimony, on cross-examination, that he did not raise an inability to work defense when he was previously charged (twice) with failure to pay child support.

Assuming, without deciding, that the failure to object was deficient, we cannot conclude that Phillips was prejudiced. Indeed, Phillips does not even argue how he was prejudiced—he simply makes multiple conclusory statements. We will not develop his arguments for him. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). Accordingly, we cannot conclude that the trial court erroneously denied an evidentiary hearing on these issues.

[6] There is nothing relevant, material or probative about the alleged request for an abortion. It was clearly offered as an attempt to prejudice the jury. Consequently, it should have been objected to and excluded. However, because of the overwhelming evidence of Phillips' guilt, the failure to object to the abortion testimony was harmless error.

C. Defense counsel's incorrect statement about the number of Jeffrey's prior convictions.

¶33 Jeffrey—Phillips' brother—testified about Phillips' accident, family efforts to rehabilitate Phillips after the accident, Phillips' inability to be left alone, and family efforts to employ Phillips themselves. Prior to trial, the parties stipulated that Jeffrey had five prior convictions. On direct examination, defense counsel asked Jeffrey: "[i]sn't it a fact that you have been convicted four times of a crime?" Jeffrey responded: "[y]es." On cross-examination, however, the State discussed the nature of each of Jeffrey's prior convictions—unlawful use of a telephone, operating while intoxicated as a second offense, possession of marijuana, disorderly conduct, and operating while intoxicated as a third offense. The State then asked Jeffrey whether he agreed that he had five prior convictions, not four. Jeffrey responded in the affirmative.

¶34 Phillips contends that defense counsel either "made a mistake" or "was simply unprepared," resulting in the State's prejudicial inquiry into each of Jeffrey's convictions. Phillips fails to show how, but for this error, there is a reasonably probability that the jury would have rendered a different verdict. While it is true that a higher number of convictions may suggest less witness credibility, *see* ***State v. Smith***, 203 Wis. 2d 288, 297-98, 553 N.W.2d 824 (Ct. App. 1996), the question is one of degree. The error was marginal—four convictions versus five convictions. Moreover, Jeffrey admitted to each conviction when questioned by the State, and confirmed that he had indeed been convicted of five crimes. In the context of the entire trial, it is clear that defense counsel's error was not substantial enough to have affected the jury's verdict. The trial court properly denied an evidentiary hearing on this issue.

D. Exclusion of B.H.'s Testimony.

¶35 Phillips argues that a ***Machner*** hearing would have determined whether trial counsel failed to submit a sufficient offer of proof regarding B.H.'s testimony.

¶36 After Jenner (Phillips' current girlfriend) testified, defense counsel informed the court that he intended to call Jenner's son, B.H., to the stand. Counsel said B.H. "will be able to testify to the activities when his mother isn't there, how he takes care of [Phillips]." The court stated that B.H.'s testimony would be cumulative and that B.H. could not testify.

¶37 Cumulative evidence is "[a]dditional evidence that supports a fact established by the existing evidence (esp. that which does not need further support)." *Cumulative Evidence*, BLACK'S LAW DICTIONARY (8th ed. 2004); *see also* ***State v. Johnson***, 231 Wis. 2d 58, 68, 604 N.W.2d 902 (Ct. App. 1999). Jenner testified at length about Phillips' struggles with his memory, daily routine, and hygiene, among other things. She testified about the level of assistance Phillips required performing daily tasks, going so far as to say that Phillips cannot go anywhere alone. Phillips fails to explain how B.H.'s testimony would have provided additional insight into his struggles beyond what had been established by Jenner. Evidentiary decisions such as this are discretionary with the trial court. We cannot find an erroneous exercise of discretion here. Consequently, we cannot conclude that Phillips was prejudiced by this lack of testimony. The trial court properly denied a ***Machner*** hearing on this issue.

IV. Phillips was not Entitled to Resentencing.

¶38 Finally, Phillips contends that the sentencing court relied on inaccurate information during sentencing. Specifically, Phillips contends that the sentencing court: (1) inaccurately called him a "deadbeat father"; (2) made inaccurate remarks about a $68,000 settlement Phillips received in 1993 following his car accident; and (3) falsely accused Phillips of lying to the jury.

¶39 "Defendants have a due process right to be sentenced on the basis of accurate information." ***State v. Johnson***, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990), *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. In order to prove a violation of due process, a defendant must prove by clear and convincing evidence both that the information was inaccurate, and that the court actually relied on the inaccurate information in sentencing. ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. Although sentencing is within the sentencing court's discretion, whether a defendant's due process right was violated is a question of law, which we review independently. *See* ***id.***, ¶41.

¶40 A review of the record indicates that the sentencing court did not rely on inaccurate information when sentencing Phillips. The court's "deadbeat father" comment was based on the fact that Phillips was found guilty by a jury of failing to support his child and had been convicted twice before of failing to support his child. A deadbeat father, by common usage, is understood to be one who fails to pay child support. The court stated that from 1994 onward, Phillips "[has] done everything in [his] power to not support [this child.]." Phillips never disputed his failure to pay child support, instead arguing that he simply did not

have the money. Indeed, Phillips agreed with the court when the court called his behavior "egregious."

¶41 It is also undisputed that in 1993, Phillips received a settlement in the amount of $68,000. Because Phillips was a minor at that time, his parents received the money. Phillips' counsel conceded that when Phillips turned eighteen, he did not attempt to take the money back from his parents. Nor did Phillips attempt to stake a claim to whatever was left of the money when his child was born. The court commented:

> I don't know what happened to the $68,000. It certainly wasn't turned over to you when you turned eighteen, it wasn't turned over to [you] when you were living with [D.T.], when you had [your child], when you separated from her…. You had the right to this money, and you chose not to challenge your family.

The court did not rely on inaccurate information, its comments were simply a recitation of undisputed facts.

¶42 Finally, Phillips contends that the sentencing court inaccurately accused him of lying to the jury, or attempting to mislead the jury, when he testified that he contacted the Social Security Administration so that his daughter could receive benefits. Phillips told the jury that he began receiving social security disability benefits towards the end of 2009, when his daughter was still a minor. Phillips testified that he told the Social Security Administration Office that he had a dependent daughter and asked whether she would receive social security funds as well. The child did eventually receive social security benefits, but only after the Milwaukee County Department of Child Support Services discovered Phillips' social security income in 2011. The Department's investigation into Phillips' social security income came at D.T.'s request. The sentencing court

found Phillips' trial testimony "a lie, at the least it certainly was an attempt to mislead the jury" into thinking that Phillips initiated the social security payments made to his child. The court's statements were not inaccurate. The record indicates that the child eventually received social security benefits as a result of the child support enforcement agency's investigation, not because of Phillips.

¶43 Moreover, a review of the transcript demonstrates that the sentencing court considered the appropriate factors when issuing its sentencing decision. The primary sentencing factors are the gravity of the offense, the need for public protection, and the character of the offender. ***State v. Larsen***, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The weight the court assigns to each factor, however, is a discretionary determination. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court's obligation is to consider the primary sentencing factors, and to exercise its discretion in imposing a reasoned and reasonable sentence. *See* ***Larsen***, 141 Wis. 2d at 426-28. The court considered Phillips' prior convictions and the seriousness of his offense, calling it "the most egregious failure to support case I have ever seen." The court discussed Phillips' character, noting his lack of remorse, his lack of efforts to support his child, and his poor decision-making. The court also considered the need to send a message to other parents who do not support their children. The sentencing court explained its reasons for its decision and did not rely on inaccurate information to do so.

¶44 For the foregoing reasons, we affirm.

By the Court.—Judgment and orders affirmed.

Not recommended for publication in the official reports.