

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 17, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2005AP521-CR

Cir. Ct. No. 2003CF5534

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MONZELL LAVELL GOODMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed.*

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

¶1 PER CURIAM. Monzell Lavell Goodman pled guilty to first-degree sexual assault with use of a dangerous weapon and as a party to a crime, and to armed robbery by use of force as a party to a crime. On the sexual assault, the circuit court imposed a thirty-five year prison sentence, with Goodman to

serve a minimum of twenty years in initial confinement and maximum of fifteen years on extended supervision. Goodman received a consecutive twenty-year prison sentence for the armed robbery, and he was ordered to serve a minimum of ten years in initial confinement. Goodman sought postconviction relief, arguing that the circuit court failed to provide an adequate explanation for the sentences imposed. The circuit court denied Goodman's motion, and Goodman appeals. Because the record demonstrates that the circuit court properly exercised its sentencing discretion, we affirm the judgment of conviction and postconviction order.

¶2 The facts for purposes of this appeal are largely undisputed. Given that both Goodman and his accomplice, Dwain M. Staten, are appealing, were sentenced by the same circuit court judge, and raise the same issue on appeal, the court's opinions on both appeals will use the same statement of facts and law. *See State v. Staten*, No. 2005AP827-CR, unpublished slip op. (WI App __). Because Goodman and Staten were sentenced separately, however, the analysis for each appellant will examine the circuit court's comments for each defendant. *See id.*

¶3 Initially, we note that Goodman and Staten accepted responsibility for the crimes, but each at various times attempted to cast primary responsibility for the crimes on the other. What is not disputed is that at the time of the crimes, Goodman and Staten were both young men in their late teens. They were out walking and decided to rob someone. Eventually, they settled on a twenty-three-year-old woman in a car. The men indicated that they had a weapon, and the victim complied with their demands due to her belief that at least one of the men was armed and that the men would harm her if she did not follow their instructions. She had only twenty dollars, which she gave to the men. Goodman and Staten blindfolded her and forced her into the trunk of her car. They drove the

victim around to various automatic teller machines and tried to take out money using personal identification numbers the victim gave them.

¶4 During the time they drove the victim around, both men sexually assaulted her. The assaults included penis-to-vagina intercourse, penis-to-mouth intercourse, and mouth-to-vagina intercourse. The woman repeatedly asked the men to stop, but the men verbally abused her, telling her “bitch, stop crying, shut up,” and to “do her job,” among other things. The victim was released after a few hours, but Goodman and Staten kept her car.

¶5 Goodman pled guilty to the charged crimes in exchange for the State agreeing to forego additional charges against him. The State also agreed that it would not recommend a particular sentence for Goodman, but it noted that it was free to argue for a prison sentence.

¶6 At sentencing, the circuit court noted that it had reviewed the presentence investigation report prepared by the Department of Corrections (DOC) and a presentence memorandum prepared by the defense. The defense indicated that it had no substantial disagreement with the DOC presentence. The State recommended prison for Goodman, characterizing Goodman’s actions toward the victim as “extraordinarily aggravated and invasive and truly vicious.” Noting that the crimes represented a “protracted ordeal” for the victim, the prosecutor argued that each of Goodman’s actions—to repeatedly put the victim in the trunk of a car, to cover the victim’s eyes, to be a party to the repeated sexual acts, and “to say the really degrading and debasing things” said to the victim—represented individual choices he made.

¶7 The prosecutor further noted that Goodman faced a possible 100-year prison sentence, with the potential of sixty-five years in initial confinement,

and that Goodman had been involved as a juvenile in the fourth-degree sexual assault of a six-year-old. The prosecutor noted that in the DOC presentence, Goodman minimized his involvement in the sexual assaults and robbery and that he “denie[s] the harm.” The prosecutor further noted the devastating effect the robbery and assaults had on the victim.

¶8 The circuit court considered a letter written by the victim in which she explained how Goodman’s and Staten’s crimes had affected her. The circuit court also heard from the victim’s mother regarding the impact of the assaults on her daughter and on her family.

¶9 In his comments, defense counsel conceded that the sexual assaults were “protracted, aggravated, [and] brutal.” Defense counsel noted, however, that once arrested, Goodman quickly accepted responsibility for his part in the assaults and robbery and had offered to pay restitution. Defense counsel also argued that Staten had taken “the leadership role.” Goodman’s attorney told the court about Goodman’s “cognitive limitations,” his difficult childhood, and his behavioral difficulties when he was placed outside of a “structured setting.” Noting that Goodman was eager to participate in various treatment options, defense counsel recommended a ten-year period of initial confinement for Goodman.

¶10 In imposing sentence, the circuit court commented extensively on the seriousness of the crime and its impact on the victim. Noting that the crimes Goodman and Staten perpetrated on the victim are “every woman’s ... nightmare,” the circuit court indicated that the only “saving grace” was that the victim was allowed to live. The court noted that Goodman chose his path, and even though his life may have been somewhat difficult, it did not excuse his actions toward the victim. The court further stated that “[j]ustice requires punishment, rehabilitation,

protection of the community, and ... mercy.” The court further noted, though, that Goodman’s actions were both “shameful and evil.” The court then stated:

When I look at this offense, ... because the law requires that I consider the seriousness of your conduct, there is no way to color it other than to say that it is aggravated. It is aggravated because it took place over a significant period of time, during which several choices were made, and during which each of those choices you could have made a different one and you chose not to You weren’t in the wrong place at the wrong time. You weren’t hanging with the wrong crowd.

....

It’s aggravated, as I said, because at any point you could have stopped this vicious act of cruelty upon another human being, and you chose not to. Your character, even by the best light that we can shed on it, ... is that you have a moderate, not minimal, ... risk of reoffending

I also look at your prior record, your educational level, whether you’ve been employed, whether you’ve done things in the community to help this community which is in sorry need of help Is there anything in your background that shows that you care about people that are less fortunate than yourself, that you’ve done some things even with the little you’ve been given, have tried to share, tried to be a human being? Have you tried to get your education? What are the things that we could build on to try and rehabilitate you?

The court then briefly discussed the need to protect the public from crimes like those Goodman committed, and imposed the sentences described above.

¶11 Goodman sought postconviction relief, arguing that the circuit court had failed to “clearly identify the primary sentencing objectives, how the facts fit those primary sentenc[ing] factors and how in light of the facts, the components of the sentence advance the specific objectives of the sentence.” See *State v. Gallion*, 2004 WI 42, ¶¶40-43, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court disagreed and denied the motion, noting that it had considered the primary

sentencing factors, and determined that the “aggravated” character and “extreme seriousness” of the offenses, as well as “the absolute need for community protection outweighed [Goodman’s] rehabilitative needs.” The circuit court concluded that it had properly exercised its discretion and that the total sentence imposed was neither unduly harsh nor excessive. Goodman appeals.

¶12 The standard of appellate review is well-settled. The circuit court has great discretion in imposing sentence. *See, e.g., State v. Wickstrom*, 118 Wis. 2d 339, 354-55, 348 N.W.2d 183 (Ct. App. 1984). This court will affirm a sentence imposed by the circuit court if the facts of record indicate that the circuit court “engaged in a process of reasoning based on legally relevant factors.” *Id.* at 355 (citation omitted). The primary factors for the sentencing court to consider are the gravity of the offense, the character of the offender, and the public’s need for protection. *State v. Larsen*, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). This court will sustain a circuit court’s exercise of discretion if the conclusion reached by the circuit court was one a reasonable judge could reach, even if this court or another judge might have reached a different conclusion. *See Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). This court is extremely reluctant to interfere with the circuit court’s sentencing discretion given the circuit court’s advantage in considering the relevant sentencing factors and the demeanor of the defendant in each case. *State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993). Even in instances where a sentencing judge fails to properly exercise discretion, this court will “search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained.” *McCleary v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

¶13 In *Gallion*, 270 Wis. 2d 535, the supreme court reaffirmed the *McCleary* sentencing analysis, which cited the importance of the sentencing

court's consideration of "the nature of the offense, the character of the offender, and the protection of the public interest." *McCleary*, 49 Wis. 2d at 274 (citation omitted). *McCleary* also emphasized the importance of the sentencing court's exercise of discretion.

It is thus clear that sentencing is a discretionary judicial act and is reviewable by this court in the same manner that all discretionary acts are to be reviewed.

In the first place, there must be evidence that discretion was in fact exercised. Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.... [T]here should be evidence in the record that discretion was in fact exercised and the basis of that exercise of discretion should be set forth.

Id. at 277 (citation omitted).

¶14 *Gallion* requires the trial court to explain the "linkage" between the sentence and the sentencing objectives. *Gallion*, 270 Wis. 2d 535, ¶46. Although the standard of review did not change, "appellate courts are required to more closely scrutinize the record to ensure that 'discretion was in fact exercised and the basis of that exercise of discretion [is] set forth.'" *Id.*, ¶76 (quoting *McCleary*, 49 Wis. 2d at 277).

¶15 In this instance, we are satisfied that the record demonstrates that the circuit court exercised discretion and set forth the basis of its reasoning on the record. The circuit court's sentencing comments, perhaps not as exemplary as the supreme court would have wished in *Gallion*, nonetheless meet the minimum requirements. The circuit court stated and considered the primary sentencing factors, but clearly placed the greatest weight on the seriousness of the offenses

and how the nature of the offenses revealed Goodman's character. For example, the circuit court based Goodman's sentence not only on the fact of the sexual assaults, but the protracted character of the assaults and the prolonged humiliation of the victim. The circuit court reasoned that, given the nature of the assaults, which involved the prolonged abuse of the victim, substantial sentences were necessary to protect the public from Goodman. The record clearly establishes that the circuit court properly exercised its sentencing discretion. Given the circumstances and nature of the crimes, we cannot conclude that the sentences imposed are unduly harsh because they are 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." See *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457 (1975).

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

