

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 2007

David R. Schanker
Clerk of Court of Appeals

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Appeal No. 2006AP2033-CR

Cir. Ct. No. 2001CF6457

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANTONIO L. OLIVER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

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

¶1 CURLEY, J. Antonio L. Oliver appeals from the judgment of conviction entered after a jury found him guilty of felony murder, while attempting to commit armed robbery, as a party to a crime. He also appeals from an order denying his postconviction motion seeking reconsideration of the trial court's denial of his suppression motion and motion for mistrial, or, in the

alternative, for modification of his sentence.¹ Oliver contends that the trial court erred by allowing the State to use his statement during its case-in-chief. In addition, he argues that the trial court erroneously exercised its discretion in denying his motion for mistrial and in sentencing him.

¶2 We conclude that the trial court did not err in allowing Oliver's statement into evidence because the record shows that: it was not until after he provided the statement that Oliver first asked for counsel; he understood his *Miranda* rights; and he voluntarily provided a statement. In addition, we conclude that the trial court's denial of his motion for a mistrial based on the prosecutor's closing argument was proper and that the trial court's exercise of its sentencing discretion was not erroneous. Accordingly, we affirm.

I. BACKGROUND.

¶3 In the early morning hours of November 30, 2001, police were dispatched to a shooting at 3038 North 21st Street in Milwaukee. Upon arriving at the scene, the police found the victim, Rafael Pedroza, sitting in the driver's seat of a vehicle. Pedroza was pronounced dead at the scene, having sustained gunshot wounds to his head.

¶4 On December 1, 2001, two Milwaukee police detectives interviewed Oliver.² The detectives stated that they advised Oliver of his *Miranda* rights and

¹ The trial and sentencing were presided over by the Honorable M. Joseph Donald. The postconviction motion was presided over by the Honorable Charles F. Kahn, Jr.

² One of the detectives testified that Oliver was interviewed in a room in Milwaukee County's Criminal Investigation Bureau that was approximately eight feet by eight feet square, consisting of a table, three chairs and overhead lighting. During the interview, Oliver was not handcuffed or restrained. Neither of the detectives were carrying firearms.

that Oliver gave a statement.³ Oliver signed the beginning portion of the statement acknowledging that he was advised of his *Miranda* rights and stated that he had them read to him in the past and would speak to the detectives.

¶5 Following Oliver's signature acknowledging he was read his *Miranda* rights, the remainder of the statement provides, in pertinent part, that sometime on November 29, 2001, Oliver was directed to a vehicle operated by Pedroza and was told that Pedroza had a lot of money. Intending to rob Pedroza, Oliver walked over to the vehicle, opened the front passenger door, took out a nine-millimeter pistol that he was carrying and pointed it at Pedroza. When Oliver pointed the gun at Pedroza, Pedroza swung at him. Oliver's finger was on the trigger and the gun went off, after which Oliver said that he fired at least one additional shot. The report concludes as follows:

Antonio states this statement is true and correct. This statement was read aloud to him as he followed along. Portions read aloud by Antonio as well. He was afforded the opportunity to pen something in his own hand but declined.

Does not wish to sign his statement until he consults with an attorney.

¶6 A complaint was subsequently filed charging Oliver with one count of felony murder, contrary to WIS. STAT. § 940.03, while attempting to commit the crime of armed robbery, party to a crime, contrary to WIS. STAT. §§ 939.32, 943.32(2) and 939.05 (1999-2000).⁴ Prior to trial, Oliver filed a motion to

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

suppress claiming that the statement he gave to the detectives was not given freely and voluntarily.

¶7 At the *Miranda-Goodchild* hearing on Oliver's motion to suppress, the two detectives testified that Oliver was advised of his *Miranda* rights.⁵ Oliver confirmed the detectives' testimony when he was questioned by his attorney during the hearing:

Q And what happened when [the detectives] got you in the interview room?

A Well, they both sat down, and then they read me my rights.

Q And did you understand that when they read you your rights?

A Yes.

....

Q I show you what's been marked as Exhibit Number 1 which is alleged to be the statement [you gave]. There is a statement about being read the Miranda rights and a signature.

A Yes.

Q Is that your signature there?

A Yes.

Q Did you understand your rights at that time?

A Yes.

¶8 The detectives both testified that after Oliver was read his *Miranda* rights, he provided them with a statement regarding his involvement in the

⁵ See *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

shooting. They stated that Oliver did not request an attorney during the course of the interview and that it was only at the end of the interview that Oliver indicated he would not sign the statement. Notwithstanding Oliver's refusal to sign the statement, the detectives testified that Oliver initialed corrections several places within the statement.

¶9 In contrast to the detectives' testimony, Oliver stated that ten minutes into the interview, upon being accused of committing the homicide, he requested an attorney but the detectives continued to question him. According to Oliver, he asked to speak with an attorney two or three times during the interview but the detectives refused to honor his request. He further testified that when his statement was read to him, he refused to sign it because it was not true. Oliver did, however, acknowledge making a correction to his statement.

¶10 The trial court found the detectives to be credible and denied Oliver's motion based on its conclusion that the detectives gave Oliver his *Miranda* warnings and that Oliver freely and voluntarily gave a statement to the detectives. Despite the fact that the statement was not signed, the trial court found that due to Oliver's "age and understanding of the proceedings," Oliver understood his rights and made a free and voluntary statement. In so finding, the trial court stated:

What I find sort of interesting in this that relates to the [detectives]' credibility is the fact that [Oliver] in essence acknowledged and initialed changes to the statement prior to signing it, and if in fact the defendant indicated that he was not going to sign anything, how do I in essence reconcile these initialed changes, particularly, when the changes occur on pages 3 and 6, and the defendant's own statement was that he made the request [for an attorney] two or three times, and made the initial request [for an attorney] within ten minutes into the interview. That -- somehow that just doesn't make sense in terms of how things transpired.

Consequently, the trial court denied Oliver's motion to suppress, and during the jury trial, Oliver's statement was entered into evidence.⁶

¶11 During the State's closing argument, the prosecutor stated:

You're not to feel pitty [sic], sympathy, anger or sorrow. Your job is obviously tough. It's meant to be tough. It should be tough, but all I ask is to hold the defendant accountable for what he did; no more and certainly no less. I submit to you the defendant has been given the benefit of the doubt in the charge. He indicated the victim slapped his hand. Obviously, as the Court instructed you, there is no intent to kill that is necessary in this.

Defense counsel objected, and the trial court sustained the objection on the basis that the jury had already been provided with and advised as to the applicable instructions. At the end of closing arguments, Oliver moved for a mistrial based on the prosecutor's closing argument, and the trial court denied the motion stating as follows:

In terms of closings, it is argument. I don't find any improper statement in the State's argument.... It just essentially made reference to the nature of the charge and what it felt the charge was and what the evidence shows in this matter, and I do not find that this argument is improper such that it would rise to a level that this Court, in essence, should declare a mistrial at this point.

Oliver was subsequently convicted of felony murder, attempted armed robbery, as a party to a crime.

⁶ Because Oliver's acknowledgment of the reading of his *Miranda* rights in the statement fell after the detectives discerned his background information, the trial court allowed only that portion of the statement that related from the period after the *Miranda* warnings were given through the end of the statement to be used in the State's case-in-chief.

¶12 At the sentencing hearing, the State recommended a forty-year prison sentence to be comprised of thirty years of initial confinement followed by ten years of extended supervision. Oliver's counsel recommended a period of initial confinement lasting between ten and twelve years followed by extended supervision. Oliver's counsel emphasized that the death was not something that was planned and further stressed various aspects of Oliver's character, which included: his potential; his achievement in obtaining a high school equivalency diploma; his supportive family; and his ability to make changes in his behavior. In addition to the parties' sentencing requests, the trial court considered a presentence investigation report recommending a sentence of thirty-three to thirty-five years of initial confinement with a period of ten to fifteen years of extended supervision.

¶13 The trial court ultimately sentenced Oliver to a total imprisonment of forty years with initial confinement of twenty-five years and extended supervision for fifteen years. In support of its sentence, the trial court stated:

In terms of trying to determine what is an appropriate sentence, the court needs to look at several factors. Those factors are the seriousness of the offense, your character as the defendant, and the need to protect the public.

....

And in terms of assessing the seriousness of the offense, having sat through the trial. And I understand the circumstances of what occurred. And unfortunately, what is really tragic in all of this is that a life was lost. Whether Mr. Pedroza was in the neighborhood visiting friends, or buying dope as some people seem to imply, he still didn't deserve to die.

And when I take into account the impact that his offense has had, particularly on Mr. Pedroza's family, his fiancée, and on the community as a whole, that whenever there is any loss of life, we all suffer. And based on that, this court finds that this is a serious offense.

When I look at your character, I look at your prior record, I look at who you are, and what you have accomplished. And what is equally a tragedy in all of this, Mr. Oliver, is that I have a young man who is 18 years of age who is looking at 50 years of imprisonment, all because you wanted to try and get some quick and easy cash. In that instant not only did Mr. Pedroza lose his life, but you lost a good portion [of] your life as well.

I take into account your prior record. You have been in the juvenile system, you have been going down this path for sometime.... [I]t appears to me that what was more important to you was being able to get geeked up on dope, to do whatever you want, whenever [you] wanted it. And if there is something that you wanted to take, you just took it. It is this type of behavior, Mr. Oliver, that this court finds very troubling, and I find that it is extremely dangerous.

Given the seriousness of the offense, given your character and the fact that you have had probation as a juvenile, that you have had a committment [sic] to the boys' school, given the fact in this case a life was lost, this court finds that confinement is necessary and not only to address the extensive treatment needs that you have, but also to protect the community from further criminal activity.

¶14 Oliver's initial postconviction counsel submitted a no-merit report to this court, and Oliver filed a response alleging that his trial counsel provided ineffective assistance at the suppression hearing. We rejected the no-merit report and directed that new counsel be appointed to Oliver. *See State v. Oliver*, No. 2004AP480-CRNM, unpublished slip op. (WI App Nov. 21, 2005). Oliver subsequently filed a motion for postconviction relief seeking reconsideration of the trial court's denial of his suppression motion and a motion for mistrial, or, in the alternative, for modification of his sentence, all of which the trial court denied. Oliver then filed this appeal from the judgment of conviction and order denying his motion for postconviction relief.

II. ANALYSIS.

A. Motion to suppress

¶15 To support his argument that the trial court erred by admitting his statement, Oliver claims that: the detectives ignored his request for counsel; he did not understand his *Miranda* rights; and his statement was not voluntary. Our review of a motion to suppress is mixed. See *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. Whether Oliver made a valid waiver of his *Miranda* rights presents a question of constitutional fact. *State v. Rockette*, 2005 WI App 205, ¶22, 287 Wis. 2d 257, 704 N.W.2d 382. “We review the ultimate issue of waiver de novo, benefiting from the circuit court’s analysis, but we will not set aside the court’s findings of historical or evidentiary fact unless they are clearly erroneous.” *Id.* In order for his statement to be admissible, the State must make two distinct showings: first, “that the defendant was informed of his *Miranda* rights, understood them and intelligently waived them”; and second, “that the defendant’s statement was voluntary.” *State v. Lee*, 175 Wis. 2d 348, 359, 499 N.W.2d 250 (Ct. App. 1993).

¶16 With respect to Oliver’s contention that the detectives ignored his request for counsel, the testimony of the detectives during the hearing on the *Miranda-Goodchild* motion reveals that Oliver did not request an attorney during the course of the interview, and that it was only at the end of the interview that he indicated he would not sign the statement. The trial court found the detectives to be credible and accepted their testimony in this regard. “[A]s to the credibility of disputed testimony in relation to evidentiary facts, this court will not substitute its judgment for that of the trial court.” *Turner v. State*, 76 Wis. 2d 1, 18, 250 N.W.2d 706 (1977). Accordingly, our review of the record confirms that the trial

court's finding that the detectives' testimony, with respect to when Oliver first requested an attorney, was more believable than Oliver's version was not clearly erroneous.

¶17 Oliver next argues that he did not understand his rights. This argument is refuted by the fact that on two occasions during the *Miranda-Goodchild* hearing, Oliver expressly acknowledged that he understood his rights. He was questioned by his attorney as follows:

Q And what happened when [the detectives] got you in the interview room?

A Well, they both sat down, and then they read me my rights.

Q And did you understand that when they read you your rights?

A Yes.

....

Q I show you what's been marked as Exhibit Number 1 which is alleged to be the statement [you gave]. There is a statement about being read the Miranda rights and a signature.

A Yes.

Q Is that your signature there?

A Yes.

Q Did you understand your rights at that time?

A Yes.

The record in this regard is uncontroverted as one of the detectives also testified that Oliver was advised of his *Miranda* rights and that Oliver told the detectives he was familiar with *Miranda* rights and had heard them before. Based on the testimony during the hearing, and due to Oliver's "age and understanding of the

proceedings,” the trial court found that Oliver understood his rights and made a free and voluntary statement. Again, we conclude that the trial court’s findings were not clearly erroneous and agree with its conclusion that Oliver was informed of his *Miranda* rights, understood them and intelligently waived them.

¶18 Finally, Oliver argues that his confession was not voluntary. In reviewing whether a confession was voluntary, we look at the totality of “the circumstances.” *Kutchera v. State*, 69 Wis. 2d 534, 546, 230 N.W.2d 750 (1975). Our main consideration in reviewing the totality of the circumstances “is whether the confession was coerced, that is, the product of improper pressures exercised by the police. The defendant must not be the victim of a conspicuously unequal confrontation in which the pressures brought to bear upon him by the interrogators exceed the defendant’s ability to resist.” *Turner*, 76 Wis. 2d at 18.

¶19 The trial court heard testimony that Oliver acknowledged being advised of his rights prior to giving the statement. Oliver further testified that the detectives did not threaten or abuse him in any way. Oliver was not restrained, and the detectives were not armed during the interview, which took place in an interview room at Milwaukee County’s Criminal Investigation Bureau and lasted approximately three hours. In addition, the trial court found that Oliver’s initialing of changes to the statement was indicative of the fact that it was voluntarily given. Based on the totality of the circumstances, we conclude that the trial court was not in error in finding that Oliver voluntarily gave his statement.

B. Mistrial motion

¶20 Next, Oliver argues that the trial court erroneously exercised its discretion in denying his motion for a mistrial based on the State’s closing argument. In his closing argument, the prosecutor said, “the defendant has been

given the benefit of the doubt in the charge. He indicated the victim slapped his hand. Obviously, as the court instructed you, there is no intent to kill that is necessary in this.”⁷ Oliver contends that the prosecutor’s comments to the effect that Oliver had already been given a break, “infected the trial with unfairness” and “represented a plea to the jury’s passion.” In his brief, Oliver states:

The gist of the prosecutor’s argument was that since Mr. Oliver had already received a break from the State, he should not be given a break by the jury. The prosecutor was asking the jury to consider a factor which was not in evidence, which was unsupported, and which was completely prejudicial to Mr. Oliver.

In addition, Oliver argues that the trial court erred in not providing a curative instruction to the jury instructing the jurors to ignore the prosecutor’s statement. He contends that the generic jury instructions given to the jury prior to closing arguments were insufficient to cure the prejudice resulting from the prosecutor’s closing statement.

¶21 Trial courts are vested with the discretionary decision of whether to grant a motion for a mistrial. *See State v. Pankow*, 144 Wis. 2d 23, 47, 422 N.W.2d 913 (Ct. App. 1988). We will reverse the trial court’s denial of a motion for a mistrial only where it is obvious that the trial court erroneously exercised its discretion. *State v. Grady*, 93 Wis. 2d 1, 13, 286 N.W.2d 607 (Ct. App. 1979). The standard of review that we employ relative to Oliver’s constitutional claim

⁷ Oliver’s trial counsel objected immediately following the prosecutor’s statement, and the trial court sustained the objection on the basis that the prosecutor was delving into the instructions that had already been provided to the jury. We do not see a connection between the prosecutor’s statement that “the defendant has been given the benefit of the doubt” and the jury instructions; therefore, we review this matter on a different legal basis, *see generally Wisconsin Elec. Power Co. v. DNR*, 93 Wis. 2d 222, 257, 287 N.W.2d 113 (1980) (noting that “[a]lthough we reach the same ultimate conclusion as the trial court, we do so upon different grounds”).

that he was denied a right to a fair trial is mixed. See *State v. Hampton*, 217 Wis. 2d 614, 621, 579 N.W.2d 260 (Ct. App. 1998). “We will not overturn a trial court’s findings of evidentiary and historical facts unless they are clearly erroneous. However, the ultimate question of whether [the defendant’s] constitutional right to a fair trial was violated is a question of law that we determine independently.” *Id.* (citations omitted).

¶22 In our review, we note that “[w]hile counsel has wide latitude in closing arguments, the control of the content, duration of the argument, and the form of the closing argument are within the sound discretion of the trial court.” *State v. Lenarchick*, 74 Wis. 2d 425, 457, 247 N.W.2d 80 (1976). In order for a prosecutor’s remarks to rise to such a level that a defendant is denied his constitutional right to a fair trial, the remarks must have “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *State v. Wolff*, 171 Wis. 2d 161, 167, 491 N.W.2d 498 (Ct. App. 1992) (citation omitted).

¶23 Here, we are not convinced that the prosecutor’s remarks “infected the trial with unfairness,” see *id.*, and instead conclude that the prosecutor’s statement to the effect that Oliver had already been given a break by virtue of the choice of the charge lodged against him amounted to harmless error. See *State v. Delgado*, 2002 WI App 38, ¶18, 250 Wis. 2d 689, 641 N.W.2d 490. The jury was presented with overwhelming evidence of Oliver’s guilt, including the statement he gave and the testimony of two of his cell mates relaying Oliver’s jailhouse confessions. In addition, the jury was instructed that closing arguments of the attorneys and their conclusions and opinions were not evidence. Because we presume that the jury followed the trial court’s instructions, see *id.*, ¶17, and in light of the evidence that was presented at trial, we conclude that there is no reasonable possibility that the prosecutor’s statement contributed to Oliver’s

conviction, *see State v. Dyess*, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985) (explaining that the test for determining harmless error is whether “there is a reasonable possibility that the error contributed to the conviction”). Accordingly, we find that the trial court properly denied Oliver’s motion for a mistrial.

¶24 In addition, we find that Oliver waived his right to argue that a curative instruction should have been provided to the jury by not raising it below. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (“The general rule is that issues not presented to the circuit court will not be considered for the first time on appeal.”); *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶11, 261 Wis. 2d 769, 661 N.W.2d 476 (emphasizing that we “will not ... blindside trial courts with reversals based on theories which did not originate in their forum” and “[t]rial courts need not divine issues on a party’s behalf” (citation omitted)). Oliver further contends that “[o]nce the trial court sustained defense counsel’s objection the prosecutor neglected to either withdraw the improper arguments and/or apologize for making them” and that he “did not have an opportunity to confront or cross-examine the prosecutor regarding the improper argument, or to ascertain the truthfulness of the prosecutor’s assertions.” Oliver does not provide any legal authority to support his contentions that he is entitled to an apology and the opportunity to question the prosecutor; therefore, we need not consider them. *See State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980) (appellate arguments lacking legal authority supporting the pertinent propositions will not be considered by this court).

¶25 Lastly, Oliver claims that he should receive a new trial in the interests of justice, pursuant to WIS. STAT. § 752.35 (2005-06), which provides that we may exercise our discretion and reverse the judgment of conviction “if it appears from the record that the real controversy has not been fully tried, or that it

is probable that justice has for any reason miscarried....” Oliver does not explain why he believes the real controversy was not tried or how justice was miscarried other than by claiming that the statement was prejudicial to him. An allegedly prejudicial statement does not, however, automatically result in the real controversy not being tried or in the miscarriage of justice. *See State v. Maloney*, 2006 WI 15, ¶14 n.4, 288 Wis. 2d 551, 709 N.W.2d 436 (explaining that a finding that the real controversy has not been tried is appropriate in situations where the jury was not given the opportunity to consider evidence that pertains to critical issues, and that for justice to have been miscarried, there must be a strong likelihood of a different result on retrial).

¶26 We will not craft Oliver’s undeveloped argument in this regard for him. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (noting that the court of appeals cannot act as both advocate and judge, and where arguments are supported by only general statements, we may decline to review them on the basis that they have been inadequately briefed). Accordingly, we conclude that the trial court did not erroneously exercise its discretion in denying the motion for a mistrial and that Oliver’s constitutional right to a fair trial was not violated.

C. Sentencing

¶27 Lastly, Oliver claims that the trial court erroneously exercised its discretion in sentencing him to forty years of imprisonment, comprised of twenty-five years of initial confinement and fifteen years of extended supervision. At the sentencing hearing, the State sought a sentence of thirty years of initial confinement and ten years of extended supervision. Oliver asked for ten to twelve years of initial confinement plus extended supervision. In sentencing Oliver, the

trial court considered a presentence investigation report recommending a sentence of thirty-three to thirty-five years of initial confinement with a period of ten to fifteen years of extended supervision.

¶28 On appeal, Oliver contends that the trial court imposed an unduly harsh sentence, and, in doing so, did not adequately consider what Oliver alleges are positive aspects of his character. The positive aspects he relies upon include: his potential; his achievement in obtaining a high school equivalency diploma; his supportive family; and his ability to make changes in his behavior. In his brief, Oliver argues:

[T]he [trial] court neglected to refer to the positive aspects of Mr. Oliver’s character when making its sentencing comments. The court did not even give a passing reference to these aforementioned mitigating circumstances. Instead, the court chose to focus almost exclusively on the nature of the offense.

In addition, Oliver argues that the trial court failed to engage in a logical reasoning process and that, as a result, modification of his sentence is justified. *See McCleary v. State*, 49 Wis. 2d 263, 281-82, 182 N.W.2d 512 (1971) (noting that the “requisite to a prima facie valid sentence is a statement by the trial judge detailing his reasons for selecting the particular sentence imposed”).

¶29 Where there is a challenge to a sentence, we will analyze the trial court’s decision to determine whether it erroneously exercised its discretion. *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). There exists a strong policy against interference with the trial court’s sentencing determinations; accordingly, we will presume that the trial court acted reasonably. *State v. Wickstrom*, 118 Wis. 2d 339, 354, 348 N.W.2d 183 (Ct. App. 1984). Our presumption can only be rebutted where the defendant shows “an unreasonable or

unjustifiable basis for the sentence in the record.” *Id.* If the trial court “engaged in a process of reasoning based on legally relevant factors,” we will uphold the sentence. *Id.* at 355. To comport with this deferential standard of review:

[W]e are obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained. It is not only our duty not to interfere with the discretion of the trial judge, but [also] it is, in addition, our duty to affirm the sentence on appeal if from the facts of record it is sustainable as a proper discretionary act.

McCleary, 49 Wis. 2d at 282.

¶30 The three primary factors the trial court must consider when sentencing are: (1) the gravity of the offense; (2) the character of the offender; and (3) the need to protect the public. *Wickstrom*, 118 Wis. 2d at 355. In addition, the trial court may consider other factors such as:

A past record of criminal offenses; a history of undesirable behavior patterns; the defendant’s personality, character and social traits; the results of a presentence investigation; the vicious or aggravated nature of the crime; the degree of the defendant’s culpability; the defendant’s demeanor at trial; the defendant’s age, educational background and employment record; the defendant’s remorse, repentance and cooperativeness; the defendant’s need for close rehabilitative control; and the rights of the public.

Krueger, 119 Wis. 2d at 337 (citations omitted). The weight afforded each factor is a matter “particularly within the wide discretion of the sentencing judge.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). In addition, the trial court needs only to discuss the relevant factors and thus, is not required to consider mitigating circumstances. *See State v. Echols*, 175 Wis. 2d 653, 683, 499 N.W.2d 631 (1993) (refusing to adopt a rule requiring a sentencing court to specifically address on the record each of the three primary sentencing factors, and

concluding that the better course is to allow the sentencing court to reference the factors it deems relevant).

¶31 While Oliver may have hoped that the trial court would weigh the factors differently, the choice is for the trial court to make. See *Ocanas*, 70 Wis. 2d at 185. After reviewing the record, we conclude that Oliver has failed to show “an unreasonable or unjustifiable basis for the sentence in the record.” *Wickstrom*, 118 Wis. 2d at 354. We find no indication that the trial court abused its discretion in sentencing Oliver. Notably, the initial confinement period of the sentence imposed was less than that recommended in the presentence investigation report and by the State. Furthermore, the trial court provided specific reasons to support its sentence, which included: the serious and tragic nature of the crime; its finding that Oliver had “been going down this path for sometime”; and Oliver’s prior record. Our review confirms that the trial court more than adequately addressed each of the relevant sentencing factors. Given the circumstances, the sentence imposed does not “shock public sentiment” or “violate the judgment of reasonable people concerning what is right and proper....” *Ocanas*, 70 Wis. 2d at 185. Accordingly, we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

