

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 17, 2007

David R. Schanker
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. 2006AP2924-CR

Cir. Ct. No. 2005CF5704

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CALVIN V. SANDERS, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Calvin V. Sanders, Jr., pled no contest to first-degree reckless injury while armed, as party to a crime. See WIS. STAT.

§§ 940.23(1)(a), 939.63, 939.05 (2003-04).¹ Sanders appeals from the judgment of conviction and an order denying his motion to modify the sentence as unduly harsh. The only issue on appeal is whether the court erroneously exercised its sentencing discretion. We affirm.

¶2 Sanders was identified from a photo array as one of several gang members who shot Richard McAdoo numerous times at close range. Sanders was charged with both first-degree reckless injury while armed and with being a felon in possession of a firearm, but the latter charge was dismissed pursuant to his plea negotiations. At the time of his sentencing, Sanders was imprisoned for felony theft, and he had an additional drug-related adult felony conviction as well as a gun-related juvenile adjudication.

¶3 The circuit court considered a presentence investigation recommendation for three to four years of initial confinement followed by three to four years of extended supervision. Sanders asked the court to adopt the presentence recommendation while the State asked the court to impose the maximum term of twenty years' initial confinement and ten years of extended supervision. The court sentenced Sanders to twenty-five years of imprisonment, comprised of fifteen years of initial confinement and ten years of extended supervision.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 The circuit court denied Sanders’s motion to modify his sentence without conducting a hearing.² It concluded that the sentence was not unduly harsh in light of the gravity of the conduct, the defendant’s character, and the need for protection of the public.

¶5 “The standards governing appellate review of an imposed sentence are well settled.” *State v. Taylor*, 2006 WI 22, ¶17, 289 Wis. 2d 34, 710 N.W.2d 466. “A circuit court exercises its discretion at sentencing, and appellate review is limited to determining if the court’s discretion was erroneously exercised.” *Id.* We adhere to a strong public policy against interference with that discretion. *State v. Gallion*, 2004 WI 42, ¶18, 270 Wis. 2d 535, 678 N.W.2d 197.

¶6 To properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence imposed. *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20.

[The circuit court] must specify the objectives of the sentence on the record, which include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence of others. It must identify the general objectives of greatest importance, which may vary from case to case. The circuit court must also describe the facts relevant to the sentencing objectives and explain, in light of these facts, why the particular component parts of the sentence imposed advance the specified objectives. Similarly, it must identify the factors that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence the sentencing decision.

Id. (citations omitted).

² The Honorable William W. Brash, III, presided over Sanders’s guilty plea and sentencing. The Honorable Jeffrey A. Kremers presided over and denied Sanders’s motion to modify sentence.

¶7 The court should consider the gravity of the offense, the character of the offender and the protection of the public. *Harris v. State*, 75 Wis. 2d 513, 519, 250 N.W.2d 7 (1977). It must consider any mitigating or aggravating factors applicable under the circumstances and may also consider a wide range of other factors concerning the defendant, the victim, the offense, and the community. *Gallion*, 270 Wis. 2d 535, ¶¶40-43 and n.11 (citations omitted). The circuit court need discuss only the relevant factors. See *State v. Echols*, 175 Wis. 2d 653, 683, 499 N.W.2d 631 (1993). The weight given to each factor is within the court’s discretion. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶8 The circuit court must explain the general range of the sentence, but not the precise term imposed. *Gallion*, 270 Wis. 2d 535, ¶49. “[T]he exercise of discretion does not lend itself to mathematical precision.” *Id.*

¶9 The record here reflects an appropriate exercise of sentencing discretion. The court considered protection of the community to be the primary sentencing objective. Sanders’s failure to accept responsibility substantially influenced the sentence crafted to meet that primary objective.

¶10 The victim described being shot repeatedly by Sanders at point blank range, while Sanders claimed that he merely shot into the air. Attitude towards the crime is a well-established consideration in assessing the risk a defendant may pose to the public from being at large. See *State v. Baldwin*, 101 Wis. 2d 441, 459, 304 N.W.2d 742 (1981).

¶11 Sanders objects that the court ignored the acceptance of responsibility inherent in a no contest plea. Selection and weight of the relevant factors lies within the discretion of the circuit court. While the circuit court did

not weigh the factors as Sanders hoped, the choice is for the court to make. *See Ocanas*, 70 Wis. 2d at 185.

¶12 The court also appropriately considered punishment and deterrence as key objectives, expressly rejecting probation and noting that a need for confinement was undisputed. The court considered particularly significant the aggravated nature of an offense involving multiple gun shots. It viewed the incident as one that “could have as easily ... ended in the death of [the victim].” It expressed the need to “send a deterrent message” to the community that “this kind of behavior is simply not acceptable.”

¶13 The court considered Sanders’s criminal record and his employment history, characterized by the State as “spotty” and “sporadic.” The court concluded that Sanders was “headed down a path that’s going to lead nowhere.”³

¶14 The sentence here is substantial, but it is not unduly harsh. Sanders fired eight shots into the body of another human being. The victim told the court that he was shot in the hand only because he moved quickly enough to push the gun away from his head. Under the circumstances, a long period of confinement does not “shock public sentiment” or “violate the judgment of reasonable people concerning what is right and proper.” *Ocanas*, 70 Wis. 2d at 185. The circuit

³ Sanders also argues that he should not have been penalized for failing to implicate third parties as additional perpetrators. He points to nothing in the record demonstrating that the court imposed such a penalty nor does he point to authority supporting his contention that to do so is an erroneous exercise of the court’s discretion. We therefore merely note that “it is ‘entirely proper’ for a trial court ‘to consider on sentencing, the defendant’s cooperativeness as manifested by his refusal to name his accomplices.’” *State v. Kaczynski*, 2002 WI App 276, ¶9, 258 Wis. 2d 653, 654 N.W.2d 300 (citation omitted).

court identified the factors it considered and properly exercised its discretion in concluding that substantial confinement was warranted.

By the Court.—Judgment and order affirmed.

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

