

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 17, 2014

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. 2013AP2484-CR

Cir. Ct. No. 2011CF70

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CALEB M. MILLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Sawyer County: GERALD L. WRIGHT, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Caleb Miller appeals a judgment of conviction for first-degree reckless homicide and aggravated battery with intent to cause great bodily harm, both as a party to a crime, and an order denying postconviction relief. Miller argues his sentence was unduly harsh because the circuit court gave too

much consideration to his affiliation with the Latin Kings gang and not enough consideration to mitigating factors. We reject Miller's arguments and affirm.

¶2 A criminal complaint alleged that in the early morning hours of April 22, 2011, Miller and several others brutally stabbed and killed John McDaniel. Derrick McDaniel also suffered serious stab wounds and other injuries. Multiple witnesses told law enforcement investigators Miller actively participated in the stabbings and beatings.

¶3 Miller was charged with first-degree intentional homicide, attempted first-degree intentional homicide, aggravated battery with intent to cause great bodily harm, and criminal trespass, all as a party to the crime. Miller pleaded no contest to first-degree reckless homicide and aggravated battery with intent to cause great bodily harm, both as a party to the crime. The circuit court imposed a sentence consisting of thirty years' initial confinement and ten years' extended supervision on the first-degree reckless homicide charge; and ten years' initial confinement and five years' extended supervision consecutively on the aggravated battery charge.

¶4 Miller moved for postconviction relief. He requested plea withdrawal on the ground of ineffective assistance of counsel and resentencing due to the unduly harsh nature of the sentence. The court denied the motion. Miller now renews his sentencing challenge on appeal.

¶5 When a defendant argues that his sentence is excessive or unduly harsh, a court may find an erroneous exercise of discretion only where the sentence is so excessive, unusual and disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people as to what is right and proper under the circumstances. *See Ocanas v. State*, 70 Wis. 2d

179, 185, 233 N.W.2d 457 (1975). A sentence well within the maximum limits allowable by law “is presumptively not unduly harsh or unconscionable.” *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

¶6 Here, Miller faced the possibility of consecutive sentences totaling seventy-five years, consisting of fifty years’ initial confinement and twenty-five years’ extended supervision. The sentence imposed was well within the statutory limits and therefore it is presumptively not unduly harsh or unconscionable.

¶7 Although that presumption does not automatically validate Miller’s sentence, the record reflects a proper exercise of sentencing discretion. The circuit court considered Miller’s character, the seriousness of the offenses and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). It is irrefutable that Miller was party to a crime of a fatal stabbing and beating. The court acknowledged Miller’s contention that he did not go to the McDaniel residence intending to commit murder, but once he arrived and the brawl began, Miller’s conduct showed he “didn’t care whether the McDaniel boys lived or died.” As the court stated, “[O]ne young man died. A young man with a lot of promise. And another young man nearly died and has some serious injuries as a result of it. And for what?” The court concluded Miller “need[ed] a significant amount of time in prison just to appreciate the seriousness of what happened that night.”

¶8 The circuit court considered Miller a dangerous man, and it was entitled to do so. At the time of this incident, Miller held a high leadership position within the Latin Kings gang. The court also noted Miller’s extensive and escalating criminal history both as a juvenile delinquent and an adult. As a result, the court appropriately concluded the public needed protection from Miller.

¶9 Miller nevertheless insists the circuit court gave too much weight to his gang affiliations, and he points to various factors he believes should have mitigated his sentence. However, the weight attached to a relevant factor in sentencing is within the wide discretion of the sentencing court. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20.

¶10 In any event, the record reveals the court acknowledged various mitigating factors, including Miller's "unfortunate upbringing." The court stated, "I do take some pity on him for that, but he is responsible for his actions." Indeed, Miller stated to the presentence investigation author that "I take full responsibility [for] my actions ... I know I was party to the death and injuries of another life." Miller admitted involvement in alcohol and "taking pills" at the time of the crimes in the present case, and also that the majority of his crimes were done while under the influence of alcohol or drugs. The court was not obligated to consider Miller's disordered life, culminating in death and serious injury, as a mitigating sentencing factor.

¶11 In addition, Miller's assertions to this court of minimal involvement in the offenses rest uneasily beside witness statements showing him as an active participant in the stabbings and beatings. His assertions are critically undercut by the court's finding that "one thing that almost all of the stories had consistent was that at some point or another Mr. Miller was standing over J.B. [John McDaniel] with a knife." There is no basis in the record before us on which to conclude the sentence imposed was unduly harsh or unconscionable.

By the Court.—Judgment and order affirmed.

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

