COURT OF APPEALS
DECISION
DATED AND FILED

October 8, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 96-3373-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JANEL L. BROWN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. Janel L. Brown appeals pro se from a judgment of conviction for battery to a witness. On appeal, she contends that the sentence imposed by the circuit court was excessive. Given the egregious nature of the battery, we cannot agree. Accordingly, we affirm the judgment of the circuit court. Brown's fiancé was charged with sexually assaulting a child. Brown attended his preliminary hearing. After the child victim testified and was leaving

the courtroom, Brown approached her, began calling her names, said "I hate you," and struck her in the abdomen with her purse.

Pursuant to a plea agreement, Brown pled guilty to a charge of battery to a witness; the second charge of physical abuse of a child was dismissed and read in. Brown was given one year of probation; conditions included two months' incarceration in the county jail, with work release, and 250 hours of community service. Brown appeals.

In her brief, Brown accurately points out that in reviewing sentencing, this court will begin with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of. *See* ***State v. J.E.B.,*** 161 Wis.2d 655, 661, 469 N.W.2d 192, 195 (Ct. App. 1991). Brown contends that the circuit court misused its sentencing discretion by relying upon two unjustifiable bases. We, however, cannot agree.

Brown first contends that the court considered "the relationship [she] had with her fiancé and ... import[ed] responsibility for his alleged offenses upon her." She further argues that the court, in essence, sentenced her to a jail term for her fiancé's yet-unproved crime. We cannot agree. While the court did make some references to Brown's fiancé, relatively little of the court's sentencing commentary was devoted to him or to Brown's relationship with him. Further, in

referring to the fiancé, the court did not presume him guilty, but rather conditioned its references by alluding to his upcoming trial.[1]

Moreover, it was not unreasonable for the court to consider Brown's relationship with her fiancé and the crimes charged against him because her fiancé's criminal charges were the very reason she was present at the preliminary hearing, and the testimony of the child victim was at odds with Brown's belief in his innocence. A sentencing court may consider a defendant's personality and character. *See* ***id.*** at 662, 469 N.W.2d at 195. Brown's reasons for lashing out at the victim reflected these proper considerations, and we cannot say the court erred in examining them.

Second, Brown contends that the sentencing court unduly emphasized "general, as opposed to special, deterrence." Again, we cannot agree. The court did point out that "the public demands that the Court be a place of safety, where people can testify, the truth can come out and be determined." However, the court then made clear that it was punishing Brown for her offense particularly: "Ms. Brown attacked that very sacred place and attacked a person within it, causing especially a lot of emotional trauma and pain as well." The court also properly focused upon the battery as a "very, very serious offense, and one that should outrage anybody, especially when it is a young, impressionable girl who's been traumatized by it."

[1] For example, the court stated, "In this particular case there's at least strong evidence that it's been a terrible result and that maybe Mr. Wilson—again, that remains to be seen from a trial ...." Later, the court noted that "[n]ow, of course it remains to be seen whether [the child victim] was, in the sense of whether—how a jury will find that out.... It's hard to understand why two young women would say that if it didn't, but again that's for that jury to find out."

This court concurs in these sentiments expressed by the circuit court at sentencing; witnesses, especially children, should be able to expect a courtroom to be a refuge from violence, not an arena for it. We are unpersuaded by Brown's claim that the court gave undue emphasis to general deterrence.

By the Court.—Judgment affirmed..

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.