COURT OF APPEALS
DECISION
DATED AND FILED

October 28, 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. 2014AP204-CR **Cir. Ct. No. 2012CF535**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ISAIAH N. TRIGGS,

DEFENDANT-APPELLANT.

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

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

¶1 CURLEY, P.J. Isaiah N. Triggs appeals the judgment convicting him of first-degree reckless homicide, as party to a crime, contrary to WIS. STAT.

§§ 940.02(1) and 939.05 (2011-12).[1] He also appeals the order denying his postconviction motion. On appeal, Triggs argues that the trial court erred in denying his postconviction motion without a hearing because: (1) trial counsel was ineffective; (2) the plea colloquy was defective; and (3) in the alternative, the trial court erroneously exercised its discretion at sentencing. We affirm.

BACKGROUND

¶2 In February 2012, Triggs and a co-defendant, Johnny Tyrone Gibson Jr., were charged with first-degree intentional homicide as parties to the crime for the shooting death of Mark Burt. According to the criminal complaint, both Triggs and Gibson told police that they lured Burt into an alley under the pretense of committing a robbery together, and both told police that Triggs shot Burt, but each defendant tried to implicate the other for planning the homicide. Triggs' story was that Gibson "was 'beefing' with the victim over a lie and … wanted the victim dead." Triggs also said that Gibson threatened to kill him if he did not kill Burt. Gibson, on the other hand, said that Triggs wanted to kill Burt "for allegedly having sex with his cousin."

¶3 The complaint was based in part on three statements that Triggs gave to police after his arrest. The first statement was given the evening of February 18, 2012, a few hours after Triggs was arrested. In this statement, Triggs provided police with background information about his family and education, and then, after being provided with ***Miranda***[2] warnings, spoke to police about Burt's death,

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

saying that "he had no idea who killed Mark Burt and he wasn't there." The second statement was given the morning of February 19, 2012, at about 6:34 a.m. In this statement, Triggs, after being provided with ***Miranda*** warnings, agreed to speak with police and said that he never talked with Gibson about Burt's death. When the interviewing detective accused him of lying, Triggs said that he wanted to talk with a lawyer and the interview ended. The third statement was given the evening of February 19, 2012, after Triggs informed police that he wanted to talk.

¶4 The third statement contained Triggs' confession. We relate the details here as material to this appeal. At the start of the third interview—an interview that Triggs, not police, had initially requested—Triggs asked for counsel to be present. One of the interviewing detectives told Triggs that it would not be possible for him to speak with a lawyer that night, as police "would not be able to facilitate getting a lawyer … on [a] Sunday night." Triggs then asked whether he could speak with a lawyer in the future, and the detective responded that he could do so, but not on that particular night. Triggs responded that "he wished to tell his side of the story and would speak to Detectives without a lawyer present." When the detectives brought Triggs to the interview room, however, Triggs "again mentioned his lawyer." The interviewing detective explained that "we would not be conducting this interview if he wished to have a lawyer present." Triggs then said that he did in fact want to talk to police and that he would do so without an attorney present. One of the interviewing detectives then gave Triggs his ***Miranda*** warnings, and, after confirming that Triggs understood them and did in fact wish to proceed without an attorney present, questioned him about the shooting. Triggs then told police that he did in fact shoot and kill Burt, but wanted to explain "his side of the story," which was that Gibson threatened to shoot him if he did not kill Burt.

¶5 Following the police interviews and the charge of first-degree intentional homicide, Triggs waived his preliminary examination. Triggs signed a preliminary hearing questionnaire and waiver form, and a court commissioner engaged in a colloquy with Triggs, confirming that Triggs understood the rights he was waiving and that no one had made any promises to induce him to waive his hearing.

¶6 In October 2012, Triggs pled guilty, pursuant to a plea bargain, to one count of first-degree reckless homicide as party to a crime. Before the plea hearing, Triggs executed a written guilty plea questionnaire, to which trial counsel had attached the jury instruction for first-degree reckless homicide. As relevant here, during the plea hearing, the trial court took steps to ensure that: Triggs understood the nature of the crime to which he pled guilty; there was a factual basis for the plea; and Triggs understood the constitutional rights he was waiving by pleading guilty.

¶7 At the plea hearing, to ensure that Triggs understood the nature of the charges against him, the trial court discussed the individual elements of first-degree reckless homicide:

> You caused the death of the victim of the offense by criminally reckless conduct and that criminally reckless conduct means that you created a risk of death or great bodily harm to another person and that the risk of death or great bodily harm was unreasonable and substantial and that your conduct, you are aware that your conduct created the unreasonable and substantial risk of death or great bodily harm and that the circumstances of your conduct showed utter disregard for human life.

The trial court asked Triggs if he understood and Triggs replied, "Yes." The trial court asked Triggs whether he had gone over the elements of the offense with his lawyer and how they related to the facts of the case, and Triggs responded that he

had done so. The trial court then explained the concept of party-to-a-crime liability and asked Triggs if he understood, and Triggs replied that he did. The trial court also informed Triggs that if the case went to trial, the "State would have to prove you are guilty beyond a reasonable doubt as to every single element of the offense" with which he had been charged.

¶8 In addition, during Triggs' guilty plea hearing the trial court stated that it would use the criminal complaint as a factual basis for the guilty plea. Neither the State nor Triggs objected.

¶9 Also at the plea hearing, the trial court confirmed that Triggs understood the rights he would be waiving by pleading guilty. Triggs had, by this point, already executed the standard guilty plea questionnaire and waiver-of-rights form, which identified the rights Triggs waived by pleading guilty. At the hearing, trial counsel indicated that she had reviewed the questionnaire and attachments with Triggs and that Triggs understood them. The trial court then discussed the forms with Triggs, asking Triggs if he understood that he would "be waiving those constitutional rights that are contained in the guilty plea questionnaire and waiver of rights form [he] signed." Triggs responded, "Yes." The trial court further discussed some of those rights, including the right to a jury trial, the right to a unanimous verdict, and the right to have the State prove his guilt beyond a reasonable doubt regarding each and every element of the offense. Triggs responded that he understood. The trial court then asked Triggs if he understood that he would be waiving any defenses to the charges, including the right to challenge the sufficiency of the complaint, the right to challenge the constitutionality of any police actions—including any stop, search, seizure, arrest, or actions surrounding Triggs' statements made to police—and Triggs responded, "Yes." The trial court also informed Triggs of his right to confront witnesses who

would have testified against him and to subpoena witnesses on his own behalf. Triggs stated that he understood. Finally, the trial court asked trial counsel if she was satisfied that Triggs "intelligently, voluntarily and knowingly" waived his constitutional rights, and counsel responded that she was.

¶10 After Triggs pled guilty, the trial court sentenced him to forty years of initial confinement and eight years of extended supervision. The trial court noted that Triggs and Gibson hatched a plan that led to a "horrific, brutal, savage result which took the life of another human being." The court also noted Triggs' role as the shooter and "the vicious or aggravated nature of the offense—sneaking up on someone, shooting the person in the head and … shooting a number of different shots into … the victim's body." The court also explained that the sentence was "also to protect the community because" Triggs had killed one of his friends, saying "what would you do to someone else who wasn't a friend of yours, somebody who had trusted [you?]" The trial court did recognize various mitigating factors, such as Triggs' young age, his education, background, employment history, as well as positive factors such as Triggs' apparent remorse and acceptance of responsibility.

¶11 Thereafter, Triggs filed a postconviction motion, which the trial court denied. Triggs now appeals. Additional facts will be developed below.

ANALYSIS

¶12 On appeal, Triggs argues that the trial court erred in denying his postconviction motion because: (1) trial counsel was ineffective; (2) the plea colloquy was defective; and (3) in the alternative, the trial court erroneously exercised its discretion at sentencing. We address each argument in turn.

(1) Trial counsel was not ineffective.

¶13 On appeal, Triggs argues that the trial court erred in denying his postconviction motion because trial counsel, by persuading Triggs to waive his preliminary hearing and by failing to move to suppress the statements he made to police, was ineffective.

¶14 "Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review." ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. "A hearing on a postconviction motion is required only when the movant states sufficient material facts that, if true, would entitle the defendant to relief." ***Id.***, ¶14. This is a question of law subject to *de novo* review. *See* ***id.***, ¶9. "If the motion raises such facts, the [trial] court must hold an evidentiary hearing." ***Id.*** If, on the other hand, "the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the [trial] court has the discretion to grant or deny a hearing." ***Id.*** We review the trial court's discretionary decisions under an erroneous exercise of discretion standard, *see* ***id.***, upholding the trial court's decisions "unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion," *see* ***State v. Jeske***, 197 Wis. 2d 905, 913, 541 N.W.2d 225 (Ct. App. 1995).

¶15 To sufficiently allege that trial counsel was ineffective, Triggs must set forth facts showing that trial counsel's performance was deficient and that this deficient performance was prejudicial. *See* ***State v. Mayo***, 2007 WI 78, ¶33, 301 Wis. 2d 642, 734 N.W.2d 115; *see also* ***Strickland v. Washington***, 466 U.S. 668,

687 (1984). To establish deficient performance, Triggs must allege facts from which a court could conclude that trial counsel's representation was below objective standards of reasonableness. *See* ***State v. Wesley***, 2009 WI App 118, ¶23, 321 Wis. 2d 151, 772 N.W.2d 232. To demonstrate prejudice, he "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *See* ***Strickland***, 466 U.S. at 694. The issues of performance and prejudice present mixed questions of fact and law. *See* ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). Findings of historical fact will not be upset unless they are clearly erroneous, *see* ***id.***, but the questions of whether counsel's performance was deficient or prejudicial are legal issues we review independently, *see* ***id.*** at 236-37.

¶16 Trial counsel was not ineffective regarding Triggs' waiver of the preliminary hearing because Triggs was not prejudiced by waiving the hearing. While Triggs argues that he "never had the opportunity to cross-examine any witnesses or to find out … the evidence against him," he does not actually dispute the trial court's conclusion that Triggs suffered no prejudice because, even if the hearing had been held, there would have been sufficient evidence adduced to establish that a felony had been committed and that Triggs committed it. Triggs merely argues, without any support, that the trial court's well-reasoned conclusion "cannot be the rule of law in this area." Triggs' argument is insufficiently developed and warrants no consideration. *See* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 ("[W]e may choose not to consider arguments unsupported by references to legal authority, arguments that do not reflect any legal reasoning, and arguments that lack proper citations to the record."). Rather, we agree with the trial court that Triggs was not prejudiced by

the waiver of his preliminary hearing because "there is no reasonable possibility that a preliminary hearing would have resulted in dismissal of the charge." *See* ***Strickland***, 466 U.S. at 694. Therefore, we need not consider whether trial counsel's alleged act of persuading Triggs to waive the hearing was deficient. *See* ***id.*** at 697.

¶17 In addition, trial counsel was not ineffective for failing to file a motion to suppress because that motion would have been denied. *See* ***State v. Berggren***, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (trial counsel is not ineffective for failing to bring meritless challenges). This is because, as we will see, Triggs unequivocally waived his right to counsel before giving his incriminating statement to police.

¶18 "[A]n accused … having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." ***Edwards v. Arizona***, 451 U.S. 477, 484-85 (1981). This rule requires two distinct inquiries. First, we must determine whether the accused actually invoked his right to counsel. *See, e.g.*, ***id.*** (whether accused "expressed his desire" for, or "clearly asserted" his right to, the assistance of counsel); ***Miranda v. Arizona***, 384 U.S. 436, 444-45 (1966) (whether accused "indicate[d] in any manner and at any stage of the process that he wish[ed] to consult with an attorney before speaking"). Second, if the accused did indicate he wanted an attorney, we must determine whether he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked. *See* ***Edwards***, 451 U.S. at 485, 486 n.9. The ***Edwards*** rule "ensures that any statement made in subsequent interrogation is not the result of coercive pressures," and "is 'designed to prevent

police from badgering a defendant into waiving his previously asserted ***Miranda*** rights.'" ***Minnick v. Mississippi***, 498 U.S. 146, 150-51 (1990) (citation omitted).

¶19 We review the sufficiency of Triggs' invocation of his right to counsel under a two-pronged standard. *See* ***State v. Jennings***, 2002 WI 44, ¶20, 252 Wis. 2d 228, 647 N.W.2d 142. First, we will uphold the trial court's findings of fact unless they are clearly erroneous. ***Id.*** Second, we independently review the application of constitutional principles to those facts. ***Id.*** We review whether Triggs initiated further communication with police and whether he voluntarily, knowingly, and intelligently waived his Fifth Amendment ***Miranda*** right to counsel under the same two-pronged standard. *See* ***State v. Hambly***, 2008 WI 10, ¶71, 307 Wis. 2d 98, 745 N.W.2d 48.

¶20 Triggs takes issue with the third interview—the interview conducted the evening of February 19, 2012—arguing that, although he did initiate further discussions with police, his decision to waive his ***Miranda*** rights was not knowingly and intelligently invoked because he was seventeen years old at the time and because police "clearly deflected" his repeated requests for counsel.

¶21 We disagree. As the trial court correctly determined, the record instead shows that Triggs knowingly and intelligently waived his right to have an attorney present:

> [The interviewing detective's] report shows that [Triggs] initially contemplated speaking with detectives with a lawyer present, but when the detectives informed him they could not accommodate his request for an attorney that evening because it was a Sunday evening, [Triggs] waived his right to have an attorney present so that he could speak to detectives at that time. The report further shows that the detectives escorted … [Triggs] to an interview room only *after* he indicated that he wished to speak to the detectives without a lawyer present. Once in the interview room, when [Triggs] again mentioned a lawyer, the detectives

> told him they could not proceed with the interview at that time if he wished to have an attorney present. Once again, [Triggs] indicated that he wanted to speak to the detectives without a lawyer present. The detectives then read [Triggs] his ***Miranda*** rights, which [Triggs] stated he understood, and, again, told the detectives that he wished to speak to them without an attorney present.
>
> Everything in the record shows that the defendant was informed of his ***Miranda*** rights *and repeatedly waived them*, particularly with regard to the incriminating statements he made to the detectives on February 19, 2012. [Triggs] has not come forward with an affidavit challenging the factual circumstances surrounding his confession as described in … [the] report, and therefore, the court fails to perceive upon what factual basis and/or legal basis trial counsel should have pursued a motion to suppress his statements….

(Emphasis in trial court's decision.)

¶22 Thus, because Triggs initiated further discussions with the police, and knowingly and intelligently waived his right to have counsel present, *see* ***Edwards***, 451 U.S. at 485, 486 n.9, a motion to suppress Triggs' incriminating statement would have been denied. Consequently, counsel's performance was neither deficient nor prejudicial. *See* ***Berggren***, 320 Wis. 2d 209, ¶21.

(2) The plea colloquy was not defective.

¶23 Triggs next challenges the plea colloquy, arguing that his conviction should be overturned because the trial court failed to: establish that Triggs understood the nature of the charge against him; establish a factual basis for the plea; and advise Triggs of the constitutional rights he was waiving by pleading guilty. *See, e.g.*, ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906 (during plea colloquy trial court must, among other things: "[e]stablish the defendant's understanding of the nature of the crime with which he is charged and the range of punishments to which he is subjecting himself by entering a plea,"

"[a]scertain personally whether a factual basis exists to support the plea," and "[i]nform the defendant of the constitutional rights he waives by entering a plea and verify that the defendant understands he is giving up these rights"); *see also* WIS. STAT. § 971.08(1).

¶24 Triggs first argues that the trial court:

> never summarized the elements of the crime by actually reading the jury instructions … or carefully going over the elements with him. It also did not ask counsel to summarize the extent of his explanation of the elements with him. In fact, [Triggs] did not understand the complex elements of the crime to which he had pled guilty, and, to this day, does not understand them.

¶25 The record belies Triggs' contentions. Triggs' statements that he did not and still does not understand the elements of first-degree reckless homicide and that his counsel should have summarized the elements of the crime are without support and we will not consider them. *See* ***McMorris***, 306 Wis. 2d 79, ¶30.[3] More importantly, the record clearly shows that the trial court did establish that Triggs understood the nature of the charge to which he pled guilty. As noted, the trial court discussed the individual elements of first-degree reckless homicide, citing the relevant jury instruction. *See* WIS JI—CRIMINAL 1020. The trial court asked Triggs if he understood and Triggs replied, "Yes." In addition, the trial court asked Triggs whether he had gone over the elements of the offense with his lawyer and how they related to the facts of the case, and Triggs responded that he had done so. The trial court then explained the concept of party-to-a-crime liability and asked Triggs if he understood, and Triggs replied that he did. The

[3] We also remind counsel that WIS. STAT. § 809.19(1)(e) requires parties to support their arguments with the "parts of the record relied on."

trial court also informed Triggs that if the case went to trial, the "State would have to prove you are guilty beyond a reasonable doubt as to every single element of the offense" with which he had been charged.

¶26 Likewise, the record also shows that there was in fact a factual basis for the plea. As noted, the trial court stated that it would use the criminal complaint as a factual basis for the guilty plea. Neither the State nor Triggs objected. On appeal, Triggs argues that the record does not indicate that he knew the complaint's contents. Once again, however, the record belies Triggs' assertion. Prior to the plea, Triggs not only executed a separate addendum to the plea questionnaire and waiver-of-rights form acknowledging that he had read the complaint *and* that his attorney had read the complaint to him, but also responded affirmatively at the plea hearing when the trial court asked him if he had read the complaint or if someone had read it to him. Triggs also claims that the complaint was insufficient to provide a factual basis for the plea because it "never mentioned anything about the defendant having acted in a reckless manner in the commission of the offense." However, Triggs does not dispute that the complaint sufficiently stated facts showing that he committed first-degree intentional homicide—of which first-degree reckless homicide is a lesser-included offense. *See* WIS. STAT. §§ 939.66(2), 940.01, 940.02. Therefore, the complaint did in fact establish a factual basis for the lesser charge. *See* ***State v. Harrell***, 182 Wis. 2d 408, 419, 513 N.W.2d 676 (Ct. App. 1994) ("[T]he requirements of [WIS. STAT.] § 971.08(1)(a) are met if the trial court satisfies itself that the plea is voluntary and understandingly made and that a factual basis is shown for either the offense to which the plea is offered or to a more serious charge reasonably related to the offense to which the plea is offered.").

¶27 In addition, the trial court did properly advise Triggs of the constitutional rights he was waiving by pleading guilty. As noted, Triggs executed the standard guilty plea questionnaire and waiver-of-rights form, which identified the rights Triggs waived by pleading guilty, before the plea hearing. Moreover, at the hearing, trial counsel indicated that she had reviewed the questionnaire and attachments with Triggs and that Triggs understood them. The trial court then discussed the forms with Triggs, asking Triggs if he understood that he would "be waiving those constitutional rights that are contained in the guilty plea questionnaire and waiver of rights form [he] signed." Triggs responded, "Yes." Also, as described more fully in the background section above, the trial court further discussed many of those rights, and Triggs stated that he understood. Furthermore, the trial court asked trial counsel if she was satisfied that Triggs "intelligently, voluntarily and knowingly" waived his constitutional rights, and counsel responded that she was.

¶28 Contrary to what Triggs argues, the trial court was not required to cover each and every constitutional right being waived and was free to use the written waiver of rights form to ascertain Triggs' understanding of all of the rights being waived. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Therefore, for all of the foregoing reasons, we must reject Triggs' claims that the plea colloquy was defective.

(*3*) *The trial court did not erroneously exercise its sentencing discretion.*

¶29 Finally, Triggs argues, in the alternative, that he must be resentenced because the trial court erroneously exercised its discretion at sentencing. Sentencing is committed to the trial court's discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A defendant challenging a sentence

"has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue." ***State v. Lechner***, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998). We start with a presumption that the trial court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See* ***id.*** at 418-19. In its exercise of discretion, the trial court must identify the objectives of its sentence, including but not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. ***Gallion***, 270 Wis. 2d 535, ¶40. We expect the trial court to consider a variety of factors, including the gravity of the offense, the character of the defendant, and the need to protect the public. *See* ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. The weight assigned to the various factors is left to the trial court's discretion. ***Id.*** Moreover, the amount of necessary explanation of a sentence varies from case to case. ***Gallion***, 270 Wis. 2d 535, ¶39. We also review an allegedly harsh and excessive sentence for an erroneous exercise of discretion. *See* ***State v. Giebel***, 198 Wis. 2d 207, 220, 541 N.W.2d 815 (Ct. App. 1995). "A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

¶30 We must reject Triggs' claim because the record clearly shows that the trial court properly exercised its discretion at sentencing. As noted, the trial court considered the seriousness of the offense, noting that Triggs and Gibson hatched a plan that led to a "horrific, brutal, savage result which took the life of another human being." *See* ***Harris***, 326 Wis. 2d 685, ¶28. The court also noted Triggs' role as the shooter and "the vicious or aggravated nature of the offense—sneaking up on someone, shooting the person in the head and … shooting a

number of different shots into … the victim's body." *See* ***Harris***, 326 Wis. 2d 685, ¶28. The court also explained that the sentence was "also to protect the community because" Triggs had killed one of his friends, saying "what would you do to someone else who wasn't a friend of yours, somebody who had trusted [you?]" *See* ***Gallion***, 270 Wis. 2d 535, ¶40. The trial court also recognized mitigating factors, such as Triggs' young age, his education, background, employment history, as well as positive factors such as Triggs' apparent remorse and acceptance of responsibility. Contrary to what Triggs argues, the fact that the trial court chose not to emphasize his low risk of recidivism or rehabilitative needs does not mean that the trial court erred. *See* ***Harris***, 326 Wis. 2d 685, ¶28. Nor does the fact that Triggs received a lengthier sentence than his co-defendant, Gibson, equal an erroneous exercise of sentencing discretion. Not only was Triggs' sentence within the maximum limits, *see* WIS. STAT. §§ 940.02 & 939.50(3)(b); ***Daniels***, 117 Wis. 2d at 22, but also the trial court explained that: Triggs was found guilty of a more serious crime, first-degree reckless homicide, rather than second-degree reckless homicide; Gibson cooperated in Triggs' prosecution; and, most importantly, Triggs fired the fatal shots that killed Burt. Under these circumstances, the disparity in sentences between the two defendants was reasonable.

¶31 Therefore, for all of the foregoing reasons, we affirm the judgment and the order denying postconviction relief.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.