

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 12, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2014AP439-CR

Cir. Ct. No. 2012CF3370

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY L. TROUPE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEAN A. DiMOTTO and WILLIAM W. BRASH, III, Judges. *Affirmed.*

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

¶1 PER CURIAM. Anthony L. Troupe appeals a judgment of conviction, entered upon his guilty plea, on one count of substantial battery. He

also appeals an order denying his postconviction motion for resentencing. Troupe contends that the circuit court failed to properly consider his character at sentencing. We disagree and affirm the judgment and order.

¶2 Troupe, frustrated that his brother Alfred was using the family computer when Troupe wanted to use it, punched his brother and knocked him to the floor, then repeatedly punched him in the head. Troupe also placed his knee on Alfred's throat, impeding his breathing and causing him to go in and out of consciousness. Troupe was charged with one count of strangulation and having caused substantial bodily harm with intent to cause bodily harm.

¶3 Pursuant to a plea bargain, Troupe entered a guilty plea to the substantial battery charge. In exchange, the strangulation charge was dismissed outright, and the State recommended a prison sentence, imposed and stayed in favor of probation. The circuit court accepted Troupe's plea, but rejected probation, instead imposing eighteen months' initial confinement and eighteen months' extended supervision.¹ Troupe moved for resentencing, asserting the circuit court had failed to properly consider his character at sentencing. The circuit court denied the motion.²

¹ The substantial battery charge with which Troupe was charged is a Class I felony, punishable by up to three and one-half years' imprisonment. *See* WIS. STAT. §§ 940.19(2) & 939.50(3)(i).

² The Honorable Jean A. DiMotto originally imposed sentence and was responsible for the judgment of conviction. The Honorable William W. Brash, III, denied the postconviction motion.

¶4 Sentencing is committed to the circuit court’s discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. A defendant challenging a sentence has a burden to show an unreasonable or unjustifiable basis in the record for the sentence at issue. *See State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912, 925 (1998). We presume that the circuit court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See id.*, 217 Wis. 2d at 418–419, 576 N.W.2d at 925.

¶5 In its exercise of discretion, the circuit court is to identify the objectives of its sentence, including but not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. *See Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. In determining the sentencing objectives, we expect the circuit 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, 698, 786 N.W.2d 409, 415. The weight assigned to the various factors is left to the circuit court’s discretion. *See id.*, 2010 WI 79, ¶28, 326 Wis. 2d at 699, 786 N.W.2d at 415. The amount of necessary explanation varies from case to case. *See Gallion*, 2004 WI 42, ¶39, 270 Wis. 2d at 556, 678 N.W.2d at 207.

¶6 Troupe contends that the circuit court only considered that he had a high school diploma, played on a sports team, and was enrolled in college. He asserts that this “is merely biographical information” that “does nothing to explain Troupe’s character” and was “not enough to allow the court to craft a meaningful,

individualized sentence.” Our review of the Record, however, satisfies us that the circuit court properly exercised its sentencing discretion.³

¶7 First, we reject Troupe’s contention that this “biographical information” tells a court nothing about his character. The fact that Troupe successfully finished high school and enrolled in college tells us something different about him than if he had quit going to school at age fourteen. That he plays recreational team sports tells us something different than if he had no hobbies to occupy his spare time; it also tells us something different than if the “team” with which he socialized was a gang.

¶8 Second, this “biographical information” is not the only character evidence the circuit court expressly considered. During his allocution, Troupe expressed a desire to work on being a positive and productive member of society like people he admired. The circuit court acknowledged these goals and hopes almost immediately after Troupe finished his comments. The circuit court also noted that Troupe committed the assault on his brother because he was frustrated and incapable of handling that frustration; the way one copes with obstacles is not unrelated to one’s character.

¶9 Third, even if we thought that the circuit court had not adequately exercised its discretion because it did not sufficiently consider Troupe’s character, we will search the Record on appeal “to determine whether in the exercise of

³ Troupe asserts, as his sole issue on appeal, that “the trial court abused its sentencing discretion because it did not properly consider the character of the defendant.” (Capitalization omitted.) However, reference to “abuse of discretion” was replaced by the phrase “erroneous exercise of discretion” more than twenty years ago. See *City of Brookfield v. Milwaukee Metropolitan Sewerage District*, 171 Wis. 2d 400, 423, 491 N.W.2d 484, 493 (1992).

proper discretion the sentence imposed can be sustained.” See *Lechner*, 217 Wis. 2d at 419, 576 N.W.2d at 925 (citation omitted). The Record reveals that Alfred gave a statement to the circuit court that this incident was “not the first, second or third time or fourth or fifth” that Troupe had been violent: Troupe had head-butted one sister, had broken the nose of a disabled sister, had kicked in three doors in the home, had broken a window in the home, had thrown his girlfriend to the ground at a Culver’s, and had threatened his mother so much that she locked herself in the bathroom out of fear. Alfred also told the circuit court that Troupe loves brawling and likes talking about the hurt he brings to others. Troupe did not dispute these accusations, any and all of which are character considerations supporting the sentence.⁴

¶10 Ultimately, the Record indicates the circuit court did, in fact, consider Troupe’s character. While he might wish that the circuit court had given more weight to his positive attributes, it is clear that the circuit court was simply aghast at the severity of the crime, causing it to give more weight to that and the community-protection factor rather than to any mitigating aspects of Troupe’s character.⁵ Such is the role of the circuit court, which it properly played here. Accordingly, the postconviction motion was appropriately denied.

⁴ We note that, save for his general observations that the State was “unaware of any negative character evidence,” that the State was recommending probation based on character letters, and that defense counsel made comments about his character, Troupe does not tell us specifically what positive character traits were available for the circuit court to consider in its sentencing decision.

⁵ Indeed, the severity of the crime is the primary reason the circuit court rejected probation, explaining that “the crime is so serious that any anger management and mental health evaluations will have to take place within the prison environment.”

By the Court.—Judgment and order affirmed.

This opinion shall not be published. See WIS. STAT.
RULE 809.23(1)(b)5.

