

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2015

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. 2013AP2865-CR

Cir. Ct. No. 2011CF4202

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CASSANDRA D. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER and TIMOTHY M. WITKOWIAK, Judges. *Affirmed.*

Before Curley, P.J., Kessler, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Cassandra D. Williams appeals an amended judgment of conviction, entered on her *Alford* plea, for one count of food stamp fraud, value greater than \$5000. *See* WIS. STAT. § 49.795(6) (2011-12).¹ She also appeals the order denying her postconviction motion for resentencing.² Because the circuit court properly exercised its discretion when it sentenced her to the maximum, we affirm.

BACKGROUND

¶2 The United States Department of Agriculture subsidizes food for low income individuals and families. The State of Wisconsin administers the subsidies through the Food Share program. According to the complaint in this matter, Williams and others defrauded the Food Share Wisconsin program out of more than \$350,000. Williams specifically was linked to more than \$150,000 of that amount.

¶3 From 2008 to 2011, Williams worked as a support clerk for an office in Milwaukee that administered Food Share. As part of her job, Williams registered clients for Food Share, which involved meeting with them and entering their personal data. Williams's job duties also included creating a Request for Assistance account number and issuing temporary Quest cards. Quest cards are used by Food Share clients to buy food at grocery stores. The complaint contained

¹ *See North Carolina v. Alford*, 400 U.S. 25 (1970).

The crime was committed between 2008 and 2011. Because the current version of the statutory sections cited in this opinion are the same in all relevant respects, all references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The Honorable David A. Hansher sentenced Williams. The Honorable Timothy M. Witkowiak issued the order denying Williams's postconviction motion for resentencing.

allegations that Williams and her co-defendants fraudulently opened and renewed numerous Food Share accounts. Food Share Wisconsin purportedly paid out benefits in excess of \$150,000 on fraudulent accounts connected to Williams.

¶4 Williams was initially charged with one count of theft by fraud, value greater than \$10,000, as a party to a crime; one count of misconduct in public office; one count of unauthorized use of personal identifying information to obtain a thing of value as a party to a crime; and one count of unauthorized use of personal identifying information to obtain a thing of value. An amended information added a count of food stamp fraud, value greater than \$5000.

¶5 Pursuant to plea negotiations Williams entered an *Alford* plea to the count of food stamp fraud, which carried a maximum penalty of ten years imprisonment (five years of initial confinement and five years of extended supervision). The parties agreed that the other four charges against Williams would be read-in offenses. The circuit court accepted her plea.

¶6 At sentencing, Williams denied involvement in the fraud. She took responsibility only “for using people’s cards that I thought it was okay because they told me I could.”

¶7 In its remarks, the circuit court explained that it had to consider the seriousness and the nature of the offense:

Although this is not a violent offense, it is extremely serious, not only because of the amount of money involved, according to the State over [\$]150,000.... But the fact that this is a public employee entrusted with dispensing and being involved with the Food Share Program and she violated that trust. Her actions damaged the credibility of the Food Share Program, possibly even endangered it and not only her actions but the actions of the co-defendants here and the public doesn’t like to see people ripping off the program and I think there is overwhelming evidence

that this whole group was ripping off the Food Share Program, some more than others.

¶8 The circuit court noted that Williams had entered an *Alford* plea, which was her right, but was skeptical of her claimed innocence, stating: “Her explanation of what went on here just defies logic and I just don’t believe anything she just told me.” The circuit court found Williams’s failure to assume responsibility for her actions “concerning.” The fact that Williams’s actions resulted in the taking of resources designated for a disadvantaged population, was an aggravating factor, according to the circuit court.

¶9 As mitigating factors, the circuit court acknowledged Williams did not demand a trial, the crimes were not violent, she was not a life-long criminal, and she had recently been injured in an auto accident with her daughter. Notwithstanding, it found her underlying behavior “reprehensible.”

¶10 The circuit court concluded that there was strong need for deterrence, both specific and general, and that punishment was appropriate. The circuit court explained: “It sends a message I think both to her and others who might think of committing crimes like this in the future. You commit the crime you are going to wind up in prison and this is a prison case. This is not a probation case.”

¶11 In terms of rehabilitative needs, the circuit court remarked that there was “a greed problem” at the root of the offense:

[I]t was not a simple type of burglary or simple cashing a check and we have some of those cases where people are desperate and they forge a check or steal money or shoplift. This is serious. This offense occurred over a three-year period, involved over \$150,000 as I said and she had to plan it. She had to organize it. She had to work with others on this. It wasn’t an impulsive act. I think that is important. People make impulsive decisions and I take that

into consideration. You can make an impulsive decision and usually it is the 17[-] or 18[-]year olds, but she's 46.

¶12 The circuit court determined that the presentence investigation report writer's recommendation of two to three years of imprisonment was "absolutely insufficient based on the seriousness of the offense." It sentenced Williams to the maximum time available.

¶13 Williams subsequently filed a postconviction motion for resentencing. She argued that the circuit court did not give adequate consideration to her mitigating behavior and that the length of her sentence was excessive. The postconviction court denied her motion.

DISCUSSION

¶14 Williams continues to argue that she should be resentenced because the circuit court erroneously exercised its discretion at sentencing. According to Williams, the circuit court improperly relied on her *Alford* plea and her claimed innocence as to the read-in counts to justify sentencing her to the maximum. Additionally, she claims that the circuit court largely ignored mitigating information consisting of her lack of criminal history and the positive letters and references attesting to her character. Next, Williams takes issue with the circuit court's comments about the amount of money Williams earned while employed as an office support clerk and its remarks about a trip she had taken to Texas, both of which she submits "were not specifically related to the case."³ Lastly, she

³ There were allegations in the complaint that Williams had taken a Quest card issued to another person to Dallas during the time when the Superbowl was being played there and had made purchases using the card. During sentencing, the circuit court remarked:

(continued)

contends that the circuit court did not consider the other aspects of punishment that she had already experienced: namely, she lost her job as a result of the charges; she was forced to apply for benefits from Food Share; she was in an auto accident while the case was pending; and the extreme amount of restitution that was involved, which in and of itself was part of the punishment. Williams asserts that the sentence she received was harsh and excessive.

¶15 Sentencing is committed to the circuit 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 circuit court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See id.* at 418-19.

¶16 A sentencing court must consider the primary sentencing factors of “the gravity of the offense, the character of the defendant, and the need to protect the public.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See id.* These factors include, but are not limited to, the defendant’s criminal history, role in the offense, background, age, remorse, and cooperation. *See id.* The sentencing court

She [i.e., Williams] was making \$16 an hour. Maybe she didn’t attend the Superbowl. I have no idea. But she could at least afford to fly down there and party down there at bars.

I have no other information where the money went, but over \$150,000 [was] involved here, which is a vast amount of money.

exercises its discretion by discussing on the record the relevant factors and objectives considered when fashioning the defendant's sentence. *See State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20.

¶17 We reject Williams's claim on appeal because, as detailed above, the record clearly shows that the circuit court properly exercised its discretion at sentencing. It considered the seriousness and nature of the offenses, mitigating factors, deterrence, punishment, and Williams's rehabilitative needs. Williams argues that the circuit court used her claimed innocence as a justification for her sentence. She does not, however, direct us to any case law that prohibits a court from expressing skepticism of the version of events offered by the defendant. Here, after listening to the explanation offered by Williams for having confidential information in her home, the circuit court described her as her "be[ing] almost in an alternate universe where she sees things differently than I think anyone else would." This amounts to a reflection on her character. Additionally, to the extent that she faults the circuit court for not emphasizing certain factors, this argument is unavailing because "[i]t remains within the discretion of the circuit court to discuss only those factors it believes are relevant." *See Stenzel*, 276 Wis. 2d 224, ¶16. As to the fleeting remark about how much she made and the fact that she had taken a trip to Texas, which was referenced in the complaint, this tied in to the court's assessment of the greed that was involved in the offense.

¶18 Moreover, Williams has not convinced us that her sentence was unduly harsh. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (A sentence is unduly harsh when it is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." (citation omitted)). Her crime was a serious one,

which the circuit court went to great lengths to detail. The maximum sentence was justified.

¶19 At its core, Williams’s argument is that the circuit court should have weighed the relevant factors differently and imposed a more lenient sentence. She does not, however, show that the circuit court fashioned its sentences on the basis of some improper or unreasonable factor. She shows only that the circuit court exercised its discretion differently than she had hoped. That is not an erroneous exercise of discretion. *See State v. Prineas*, 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206 (“[O]ur inquiry is whether discretion was exercised, not whether it could have been exercised differently.”).

By the Court.—Judgment and order affirmed.

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

