

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 4, 1999

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. 98-2219-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANTONIO JONES,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Racine County: GERALD P. PTACEK, Judge. *Affirmed.*

Before Brown, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Antonio Jones appeals from a judgment convicting him of possession of cocaine with intent to deliver and from an order denying his postconviction challenge to his sentence. Jones argues that the sentencing court impermissibly considered his religious affiliation with a satanic group. Because

we conclude that the court's consideration of Jones's affiliation with a satanic group was appropriate under the facts of this case, we affirm.

Jones was convicted upon his no contest plea. At sentencing, the State argued that the circuit court should consider Jones's affiliation with the Sonz of Satan.<sup>1</sup> Defense counsel objected on the ground that Jones was being prosecuted for drug offenses, not his religious beliefs and that this information was prejudicial. The court noted the objection but elected to consider the information, which the court felt was echoed in the presentence investigation report to which Jones had not objected.

In his sentencing remarks, defense counsel conceded Jones's past involvement with satanic worship but argued that the involvement should not be considered by the court at sentencing because it was a constitutionally protected expression of Jones's religious views. During allocution, Jones expressed remorse and stated that the "religion was just a phase I was going through" and "I don't believe in that way no more."

In sentencing Jones, the court noted that Jones possessed a substantial amount of cocaine which posed a significant danger to the community. The court noted Jones's admission that he had been selling cocaine for six months to support himself and that he started selling drugs shortly after becoming involved in the Sonz of Satan in 1996. Jones admitted that this group taught him how to sell drugs and he continued to support himself this way even after he left the group. The court noted Jones's history of drug-related criminal conduct and involvement with weapons. The court found that Jones's involvement with the

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<sup>1</sup> We use the spelling found in the presentence investigation report.

Sonz of Satan brought him into contact with drug activity and that he continued his involvement with drugs even after he claimed to have left the group. In light of Jones's history, the need to protect the public and the gravity of the offense, the court imposed a fifteen-year sentence.

Postconviction, Jones challenged the sentence on the ground that the circuit court impermissibly considered his religious affiliation. At the postconviction motion hearing, the court reiterated that Jones was sentenced for a drug conviction. The court noted that it relied on the presentence investigation report which reported Jones's statements that he was involved in the Sonz of Satan, that the group introduced him to selling drugs, and that even after he left the group he sold drugs to support himself, having learned to do so from the Sonz of Satan.<sup>2</sup> Based on Jones's own statements, the court found a connection between his religious affiliation and his criminal activity. The court deemed this connection relevant to Jones's character, which is one of the factors to be considered at sentencing.

On appeal, Jones argues that the circuit court misused its discretion when it considered his religious affiliation.<sup>3</sup> Sentencing is within the circuit court's discretion. *See State v. Fuerst*, 181 Wis.2d 903, 909, 512 N.W.2d 243, 245 (Ct. App. 1994). There is a strong public policy against interfering with the trial court's sentencing discretion. *See State v. Mosley*, 201 Wis.2d 36, 43, 547

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<sup>2</sup> At sentencing, the Sonz of Satan markings on Jones's apartment walls were discussed. The prosecutor noted that Jones claimed to have ceased his Sonz of Satan involvement in December 1996. Yet, the apartment where he was living at the time of the search and arrest in this case had been leased on May 21, 1997. By the time the search was conducted on June 3, 1997, the apartment walls had been marked. This suggests that Jones's Sonz of Satan involvement had not terminated six months before as he claimed.

<sup>3</sup> Jones does not challenge the other factors considered by the circuit court.

N.W.2d 806, 809 (Ct. App. 1996). The record must show that the trial court exercised its discretion and stated its reasons for the sentence it imposed. *See id.* These factors include the gravity of the offense, the defendant's character and the need to protect the public. *See State v. Paske*, 163 Wis.2d 52, 62, 471 N.W.2d 55, 59 (1991). The weight to be given to each sentencing factor is within the circuit court's broad discretion. *See State v. Thompson*, 172 Wis.2d 257, 264, 493 N.W.2d 729, 732 (Ct. App. 1992).

The record does not support Jones's misuse of discretion claim. The court did not sentence Jones for his satanic religious affiliation; rather, the court found that this affiliation led Jones to criminal conduct. The record supports this assessment.

A sentencing court need not ignore the impetus to criminal conduct merely because the impetus is religion-based. Under the circumstances of this case, the circuit court did not misuse its discretion in focusing on the reliable nexus between Jones's religious affiliation and his criminal conduct. *See Fuerst*, 181 Wis.2d at 913, 512 N.W.2d at 246. There is no "per se [constitutional] barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Dawson v. Delaware*, 503 U.S. 159, 165 (1992). A sentencing court can properly consider a defendant's association with an organization which commits or endorses unlawful acts because that association is relevant to show that the defendant is a future danger to society. *See id.* at 166.

Here, the circuit court identified the undisputed and admitted link between Jones's association and his criminal offense, *see Fuerst*, 181 Wis.2d at

912, 512 N.W.2d at 246, and appropriately limited its sentencing consideration to this connection.

*By the Court.*—Judgment and order affirmed.

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

