COURT OF APPEALS
DECISION
DATED AND FILED

January 12, 2000

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0715-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JEREMY L. WALKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. Jeremy L. Walker appeals from a judgment of conviction and an order denying his motion for postconviction relief. Walker was convicted after a jury trial of unlawful possession of a short-barreled shotgun as a party to a crime and conspiracy to commit armed robbery. He argues that his sentence was unduly harsh and that the State did not produce sufficient evidence

to convict him of conspiracy. Because we conclude that the sentence was appropriate and there was sufficient evidence to send the question to the jury, we affirm.

¶2 The evidence at the trial established that Walker and his three friends were in a car in Racine. Walker owned the car but he was not driving it because he had an injured knee. They stopped at someone's house and one of Walker's friends purchased a sawed-off shotgun. The friend brought the gun back to the car wrapped in a white cloth and put it under the front seat of the car.

¶3 The four then decided to go to Kenosha. One of the witnesses testified that Walker was the one who suggested they go to Kenosha and "stick up some people." Walker contends that they went to Kenosha to visit his grandmother. They ended up driving around "the hood," a neighborhood of Kenosha, looking for people to rob. They noticed two people standing on a street corner and discussed whether to rob them. Some of the defendants then suggested that they come back when it was dark. Soon afterwards, the police stopped the car when the driver did not make a complete stop at an intersection. Eventually, one of the codefendants told the police about the shotgun in the car. Later, at the police station, he told them about the plan to rob people.

¶4 The other three men pled guilty. Only Walker went to trial. The jury found Walker guilty on both counts, and he was sentenced to two years in prison on the first count and twenty years probation with one year conditional jail time, sentence withheld, on count two. Walker filed a postconviction motion to vacate the judgment on the conspiracy charge and to modify his sentence. The court denied the motion.

¶5 The State first argues that this court does not have jurisdiction of an appeal from the denial of the postconviction motion because Walker did not appeal from that order. Our review of the record indicates, however, that by an order dated April 12, 1999, we extended the time in which to file a notice of appeal. The motion requesting this extension specifically asked that the time be extended to allow Walker to appeal from the postconviction order. We granted the extension. While Walker's notice of appeal did not specifically state that he was appealing from the postconviction order, this error does not necessarily deprive the court of jurisdiction.

¶6 An appellate court may correct defects or omissions in a notice of appeal if the appeal was taken in good faith. *Cf.* ***Northridge Bank v. Community Eye Care Ctr., Inc.***, 94 Wis. 2d 201, 203, 287 N.W.2d 810 (1980). As in the ***Northridge*** case: "The defect in this case is not one of jurisdiction. The notice of appeal was filed within the time for appeal set forth in every applicable statute. Defendant's mistake was in failing to designate with particularity the orders which were the subject of his appeal in addition to the judgment." ***Id.*** Therefore, we have jurisdiction to hear Walker's challenge to the order denying his motion for postconviction relief.

¶7 Walker first challenges the sentence the court imposed on him. Walker asserts that his sentence was harsher than that imposed on his codefendants. In denying Walker's motion for sentence modification, the circuit court rejected Walker's argument that he and his codefendants were similarly situated. The court specifically noted that Walker was the oldest of the four people involved and the owner of the car in which they were driving. The court also stated that Walker received a harsher sentence because he did not show any remorse and had not cooperated with the authorities. The court further stated that

Walker did not receive a harsher sentence because he had gone to trial, as he argued, but that the other codefendants had received less severe sentences because they had accepted responsibility for what they had done and had helped the authorities.

¶8 Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with that discretion. *See* ***State v. Mosley***, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). The fact that Walker's codefendants received different sentences is not sufficient to show that his sentence was unduly harsh. *See* ***State v. Perez***, 170 Wis. 2d 130, 144, 487 N.W.2d 630 (Ct. App. 1992). "Even leniency in one case does not transform a reasonable punishment in another case into a cruel one." ***Id.*** Walker must show that the disparity in sentences was arbitrary or not based upon appropriate sentencing considerations. *See* ***id.***

¶9 Here, we cannot conclude that the circuit court erroneously exercised its sentencing discretion merely because Walker received a harsher sentence than his codefendants. The circuit court considered the appropriate criteria when it sentenced Walker and articulated its reasons for imposing a harsher sentence on him than on his codefendants. This was a reasonable exercise of discretion.

¶10 The second issue Walker raises is whether the evidence adduced at trial was sufficient to support the conspiracy charge. Walker argues that the evidence was insufficient to support the conspiracy charge because there was not enough evidence to establish that he or one of his codefendants committed an act in furtherance of the commission of a crime. WISCONSIN STAT. § 939.31 (1997-98) provides in pertinent part:

> [W]hoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both….

¶11 When considering a challenge to the sufficiency of the evidence, this court must affirm "if it finds that the jury, acting reasonably, could have found guilt beyond a reasonable doubt…. [T]he jury verdict will be overturned only if, viewing the evidence most favorably to the state and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt." ***Fells v. State***, 65 Wis. 2d 525, 529, 223 N.W.2d 507 (1974) (citations omitted). If more than one inference can be drawn, the inference that supports the jury's verdict must be followed unless the evidence was incredible as a matter of law. *See* ***State v. Alles***, 106 Wis. 2d 368, 377, 316 N.W.2d 378 (1982). "[I]f any possibility exists that the jury *could* have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, we will not overturn the verdict even if we believe that a jury *should* not have found guilt based on the evidence before it." ***Id.***

¶12 Walker contends that the testimony was undisputed that the four went to Kenosha to visit his grandmother. While this was one reason given, there was also evidence that Walker suggested they go to Kenosha and "stick up some people." Once the four began driving to Kenosha and driving around "the hood" looking for people to rob, they had committed acts in furtherance of the conspiracy. Drawing the inferences, as we must, that support the jury's verdict,

we conclude that there was sufficient evidence from which the jury could find that Walker was guilty of conspiracy.[1]

By the Court.—Judgment and order affirmed.

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

[1] Walker also contends that the circuit court did not find when the conspiracy began and when it ended. Although there was no specific finding, this is not fatal. At the very minimum Walker's suggestion started the conspiracy and the trip carried it out. Those events clearly occurred within the conspiracy.