

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

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.

No. 99-1345-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

HEDY ROLLINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Racine County: EMMANUEL J. VUVUNAS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Hedy Rollins has appealed from a judgment convicting her of attempted child abduction in violation of WIS. STAT. §§ 939.32

and 948.30(1)(a) (1997-98),¹ and from an order denying her motion for sentence modification. We affirm both the judgment and the order.

¶2 Rollins's argument on appeal is that the trial court deprived her of due process and erroneously exercised its discretion when it imposed a four-year prison term based on inaccurate information. Specifically, she contends that the trial court erroneously concluded that she used multiple aliases and relied on that mistaken fact in assessing her culpability and the seriousness of the offense.

¶3 A defendant who alleges that a sentencing decision was based on inaccurate information must show: (1) that the information was inaccurate; and (2) that the trial court actually relied on the inaccurate information at sentencing. *See State v. Harris*, 174 Wis. 2d 367, 378, 497 N.W.2d 742 (Ct. App. 1993). To establish a due process violation, the defendant has the burden of proving by clear and convincing evidence that information supplied at sentencing was inaccurate and prejudicial. *See State v. Coolidge*, 173 Wis. 2d 783, 789, 496 N.W.2d 701 (Ct. App. 1993). The issue is one of law which this court reviews de novo. *See id.*

¶4 In assessing Rollins's claim that the trial court erroneously exercised its discretion at sentencing, we note that appellate courts have a strong policy against interference with the trial court's sentencing discretion and the trial court is presumed to have acted reasonably. *See State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record. *See id.* at 622-23.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶5 The primary factors the trial court must consider in imposing a sentence are the gravity of the offense, the character of the offender and the need for protection of the public. *See id.* at 623. The weight to be given to each of the relevant factors is particularly within the wide discretion of the trial court. *See State v. Curbello-Rodriguez*, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984). Imposition of a sentence may be based on any of the three primary factors after all relevant factors have been considered. *See id.*

¶6 A review of the sentencing transcript reveals that the trial court never used the word “aliases” in referring to Rollins’s use of four names. Rather, in the sentencing comments challenged by Rollins, the trial court explained its reasons for rejecting a psychological report submitted by Rollins. The report indicated that Rollins committed this offense while in a disassociative state resulting from posttraumatic stress disorder. The trial court stated:

I have all these explanations about ... this mental condition that you have. None of them satisfy. Apparently this mental condition doesn’t interfere with you living a normal life, being employed, and going to work every day and doing the other things that people have to do. *It doesn’t explain why we have a list of 4 different names that you use on a fairly regular basis.* It doesn’t ... explain. It’s an aggravated offense.

Your culpability I judge to be, that you’re responsible for your actions, Miss Rollins.... I would think that if these mental health professionals were actually somewhat on the mark, there would at least be some kind of explanation that made sense to somebody, and obviously what they offer makes sense to no one. (Emphasis added.)

¶7 The trial court’s reference to Rollins’s prior use of four different names was accurate since it is undisputed that she has gone by both her first and middle names, as well as by her maiden name, a former married name and her most recent married name of Rollins. Moreover, we reject Rollins’s contention

that the only inference that can be drawn from the trial court's comments is that the trial court believed that Rollins had used the names for fraudulent purposes. The trial court neither made nor implied such a finding.

¶8 Even if the portion of the trial court's statement indicating that Rollins used four different names "on a fairly regular basis" is deemed to be such an overstatement as to render it inaccurate, the point for which the trial court considered this information has not been shown to be inaccurate; namely, that Rollins was capable of functioning normally in society. It is clear from the trial court's sentencing comments that it considered Rollins's use of the names only as a reason for rejecting her claim that the crime resulted from a disassociative episode. Essentially, the trial court rejected the conclusions set forth in the psychological report because it believed they were inconsistent with Rollins's history of living a normal life, including maintaining employment. Viewed in context, its comment on her use of four names can reasonably be understood to express only that Rollins functioned sufficiently well and was sufficiently oriented to use her various names in a coherent manner. It was thus an additional indication that Rollins was capable of living a normal life, as evidenced by her prior history. Because she lived a normal life, the trial court was unwilling to accept the conclusions in the psychological report as an explanation for her conduct.

¶9 Because the trial court reasonably used the information regarding Rollins's names as evidence of her ability to function normally in society rather than as an aggravating factor warranting an enhanced and harsher sentence, no basis exists to conclude that the trial court relied on inaccurate information in imposing sentence on her. This conclusion is further supported by the trial court's statements at the hearing denying Rollins's motion for sentence modification. At

that hearing, the trial court stated that it sentenced Rollins to prison based on the aggravated nature of the offense, a determination which is consistent with the factors discussed by it at the sentencing hearing, including its conclusion that this was the type of crime that people have nightmares about and that every parent fears.

¶10 While Rollins is correct in arguing that the trial court considered her culpability at sentencing, its point was simply that it could not accept the explanation of the crime offered by the psychological report. It believed that Rollins was dangerous and responsible for her actions and that the public needed to be protected from her. These were conclusions it was entitled to reach. Rollins's claim that the trial court violated her due process rights or erroneously exercised its discretion by sentencing her based on inaccurate information therefore must fail.

By the Court.—Judgment and order affirmed.

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

