

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 3, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1606-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER A. CODY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: DAVID M. BASTIANELLI, Judge. *Affirmed.*

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

¶1 PER CURIAM. Christopher A. Cody appeals from a judgment convicting him of second-degree sexual assault and false imprisonment on his guilty pleas and from an order denying his sentence modification motion. Cody contends that his twenty-year sentence was a misuse of the court's sentencing

discretion because the sentence is excessive and shocks the conscience. We disagree and affirm.

¶2 Cody, who was fifteen at the time of the 1997 offenses, was convicted of intercourse by use of force with a fourteen-year-old. In sentencing Cody, the court considered his rehabilitative needs, the seriousness of the offenses and the need to protect the community. The court characterized Cody's offenses as serious. It construed Cody's expression of remorse as more related to Cody's predicament than to the incidents to which Cody pled guilty. The court noted that despite Cody's youth, he had had numerous contacts with law enforcement in the previous four years. These contacts included physical violence and lack of respect for authority. The court also considered allegations that Cody had engaged in inappropriate or violent conduct with other young women. The court evaluated Cody's character and found it marked by his tendency to demonstrate a lack of respect for others and to engage in atypical behavior to get what he wants at the moment. The court found incredible Cody's claim that he had consensual intercourse with the victim. It considered the impact on the victim, as described by the victim's mother, and the victim's fear of Cody's family, who the victim claimed had been harassing her. The court found that Cody's pattern of behavior demonstrated little empathy or regard for others.

¶3 The court found Cody to be a danger to the community and in need of incarceration to protect the community. It placed greater weight on the seriousness of the offenses and the need to protect the community than on Cody's rehabilitative needs. The court sentenced Cody to twenty years for the sexual assault (the maximum possible sentence) and withheld sentence for false imprisonment in favor of two years of probation.

¶4 Cody sought sentence modification because the sentence was excessive in light of his youth and the absence of prior contacts with the adult criminal justice system. He argued that the sexual assault was not as serious as some assaults for which the maximum penalty had been imposed. The court rejected Cody's arguments and concluded that it had properly exercised its discretion in weighing the sentencing factors. Cody appeals.

¶5 There is a strong public policy against interfering with the circuit court's sentencing discretion. See *State v. Mosley*, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). The record must show that the court exercised its discretion and stated its reasons for the sentence it imposed. See *id.*¹ The factors to be considered at sentencing 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 (1991).

¶6 The weight to be accorded to the particular sentencing factors is for the sentencing court, not the appellate court, to determine. See *State v. Spears*, 147 Wis. 2d 429, 446, 433 N.W.2d 595 (Ct. App. 1988). As long as the sentencing court considered the proper factors and the sentence was within statutory limitations, the sentence will not be reversed unless it is so excessive as to shock the public conscience. See *State v. Owen*, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996). A strong presumption of reasonableness is afforded sentencing decisions because the circuit court is in the best position to consider the

¹ We reject what appears to be Cody's suggestion that we should review the circuit court's sentence de novo rather than for an erroneous exercise of discretion. The erroneous exercise of discretion standard did not change the type of review in which we engage; it merely updated the terminology describing this type of appellate review. See *City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

relevant factors and assess the defendant's demeanor. *See State v. Setagord*, 211 Wis. 2d 397, 418, 565 N.W.2d 506 (1997). Thus, Cody must show some unreasonable or unjustifiable basis in the record for his sentence. *See State v. Petrone*, 161 Wis. 2d 530, 563, 468 N.W.2d 676 (1991).

¶7 The court considered the proper sentencing factors and weighed them in its discretion. In light of these factors, the sentence does not shock our conscience and is not excessive. The court had a reasonable basis for its sentence. Cody argues that other defendants convicted of similar crimes received less lengthy sentences. We reject this attack on Cody's sentence. As the court stated in *State v. Lechner*, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998), Wisconsin law does not require that defendants convicted of similar crimes receive equal or similar sentences. On the contrary, sentencing in Wisconsin is characterized by an individualized evaluation of defendants. *See id.* Here, the circuit court engaged in the required individualized sentencing exercise.

By the Court.—Judgment and order affirmed.

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

