

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 24, 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. 99-2075-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RYAN A. FORMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Racine County: EMMANUEL J. VUVUNAS, Judge. *Reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Ryan A. Forman appeals from the judgment of conviction and the order denying his motion for postconviction relief. Forman challenges the sentence imposed against him and not the underlying conviction. He argues on appeal that his sentence should be modified because of a new factor

or, in the alternative, because it was harsh and excessive. Because we conclude that the sentence was harsh and excessive, we reverse and remand to the circuit court for resentencing.

¶2 Forman was charged as a result of an incident involving his former girlfriend. At the time of the incident, Forman was eighteen years of age and did not have any prior criminal record or history of trouble with the police. On the night before the incident, Forman's girlfriend, Tarah McCauley, ended their relationship. On the day of the incident, Forman went to the place where McCauley worked and waited for her by her car. When she approached, he told her he wanted to talk to her and she agreed. They sat in the car and talked and then Forman told McCauley to drive. She did. First she drove to a gas station. Forman went inside to pay for the gas. Then they drove off again.

¶3 Eventually, McCauley told Forman she no longer wanted to drive and she pulled into a parking lot. Forman then told her that if he could not have her, he did not want anyone else to. He told her to get into the backseat of the car. She refused. Forman then put his hand in his jacket to reach for something. McCauley was afraid that he was reaching for a gun. McCauley began to beep the car horn. They struggled. Two men approached the car and asked what was going on. Forman pulled something out of his jacket which appeared to be a gun, but which was really a starter pistol. As Forman pointed it at one of the men, the cylinder of the pistol fell off. McCauley then got out of the car and Forman drove off.

¶4 Forman then drove the car through a fence at a quarry. He drove away from the quarry and drove the car into Lake Michigan. He crawled out as

the car sank. He was arrested and taken to a hospital. At the hospital, Forman told the police that he had intended to kill himself.

¶5 Forman was eventually charged with one count of kidnapping, one count of operating a motor vehicle without the owner's consent, and two counts of damage to property in an amount over \$1000. A trial began and then a plea agreement was reached. Forman pled no contest to one count of false imprisonment, one count of operating a vehicle without the owner's consent, and two counts of criminal damage to property in an amount over \$1000.

¶6 At sentencing, the State recommended the maximum sentence of seventeen years. Neither the victim nor her family took a position on the sentence to be imposed other than they wanted Forman to be kept away from McCauley. The writer of the presentence investigation report recommended a moderate sentence. The defense argued that Forman had no prior criminal record, he was a good student and an athlete, and he was depressed at the time of the incident but since had been treated successfully for that depression with medication. Further, the defense noted that three of the four crimes for which Forman was being sentenced were crimes against property and that no one had actually been physically injured in the incident except Forman. The court sentenced Forman to a total of twelve years in prison.

¶7 Forman filed a postconviction motion under WIS. STAT. § 809.30 (1997-98),¹ asking the court to modify his sentence. He argued that the court improperly considered that he would move quickly through the system when it

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

sentenced him and that the sentence was harsh and excessive. The court denied the motion. Forman appeals.

¶8 Forman argues that his sentence was harsh and excessive. Sentencing lies within the sound discretion of the trial court and we will not reverse absent an abuse of that discretion. *See State v. C.V.C.*, 153 Wis. 2d 145, 163, 450 N.W.2d 463 (Ct. App. 1989). “An abuse of discretion will only be found where the sentence is 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.” *Id.* We conclude that the sentence imposed against Forman was such an excessive sentence and would violate the judgment of reasonable people about what was appropriate under the circumstances.

¶9 We do not reach this decision lightly. The standard of review for sentencing decisions is an extremely deferential one. The writers of this opinion do not remember another instance where a sentence was reversed for being harsh and excessive. Formal and anecdotal research establishes only one instance when a sentence has been reversed by this court for that reason.² We conclude, however, that the character of the defendant and the circumstances surrounding the incident require that the twelve-year sentence be reversed.

¶10 Forman did not have any prior criminal history, was a good student, and suffered from a major depressive disorder which was successfully treated with medication. He was a young man disappointed with the end of his first serious

² *See State v. Gast*, Nos. 91-1698-CR, 91-1699-CR, unpublished slip op. (Wis. Ct. App. April 14, 1992).

relationship, who responded in an extremely inappropriate and dramatic way. Of critical importance is the fact that no one was physically injured in this incident except Forman. We recognize that what he did was serious and extremely frightening to the victim, and believe that some punishment was appropriate. Twelve years under these circumstances, however, was simply too much. Consequently, we reverse and remand the case for resentencing.³

By the Court.—Judgment and order reversed and cause remanded with directions.

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

³ Forman also argues to this court that the court improperly considered that he would move quickly through the system when it sentenced him. Because we conclude that the sentence was harsh and excessive, we do not need to address that issue.

