

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 19, 2000

Cornelia G. Clark  
Acting 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. 99-2076-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WILLIAM C. ROSENBERG,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments and an order of the circuit court for Waukesha County: JOSEPH E. WIMMER, Judge. *Affirmed.*

¶1 NETTESHEIM, J.<sup>1</sup> William C. Rosenberg appeals from the sentencing provisions of three judgments of conviction for operating a motor vehicle while intoxicated (OWI) pursuant to WIS. STAT. § 346.63(1)(a) and from

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98). All further references to the Wisconsin Statutes are to the 1997-98 version.

an order denying his motion for modification of the sentences. We affirm the judgments and the order.

¶2 On January 29, 1998, the State filed a criminal complaint charging Rosenberg with OWI as a third-time offender. The offense date was January 12, 1998. On February 3, 1998, the State filed another criminal complaint charging Rosenberg with OWI, again as a repeat offender. The offense date was January 9, 1998. On May 11, 1998, the State filed a further criminal complaint charging Rosenberg with OWI. The offense date was April 12, 1998. Once again, Rosenberg was charged as a repeat offender.

¶3 Eventually, all three cases were consolidated for purposes of disposition without trials. Rosenberg entered pleas of no contest to all three OWI charges. The parties agreed that the January 9, 1998 offense was a third-time offense; that the January 12 offense was a fourth offense; and that the April 12 offense was a fifth offense. Rosenberg's total sentencing exposure was thirty-six months. The State asked for sentences totaling twenty-four months. The trial court imposed sentences totaling eighteen months.

¶4 Postconviction, Rosenberg was released on bail pending appeal. He then brought a motion seeking a sentence modification, contending that the sentences were harsh and unconscionable. While the motion was pending, Rosenberg was charged with yet a sixth OWI offense. The trial court rejected Rosenberg's motion. Rosenberg appeals.

¶5 Sentencing decisions are left to the sound discretion of the circuit court and our review of a sentencing decision is limited to determining whether the court erroneously exercised its discretion. *See State v. Spears*, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999). The same standard of review applies to a trial

court's decision on a sentence modification request. *See State v. Michels*, 150 Wis. 2d 94, 96, 441 N.W.2d 278 (Ct. App. 1989). To be sustained, a discretionary determination must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law. *See Spears*, 227 Wis. 2d at 506. The appellate courts recognize a strong public policy against interference with the sentencing discretion of a trial court and we afford a presumption of reasonableness to a challenged sentence. *See id.* With these principles in mind, we turn to Rosenberg's appellate arguments.

¶6 Rosenberg argues that the sentences were harsh and unconscionable. In support he cites to his lack of a prior criminal record, the short period of time during which the offenses occurred, the lack of a pattern of criminal behavior and the fact that none of the incidents resulted in personal injury or property damage.

¶7 We reject all of Rosenberg's arguments. Even limiting our consideration of the time span to just the offenses at issue, we observe that the short period of time is as much an aggravating factor as a mitigating one. Moreover, the two prior convictions that formed the basis for the repeater allegations occurred in 1989 and 1996. Thus, the totality of Rosenberg's drunken driving conduct spanned many years, not just a few months. This conduct and its duration show a clear pattern of dangerous behavior.

¶8 Moreover, the January 9, 1998 offense occurred after Rosenberg had appeared in an intoxicated condition in the City of Waukesha Municipal Court. Because Rosenberg appeared intoxicated, a police officer advised him not to drive. Disregarding this advice, Rosenberg drove away from the court and was arrested shortly thereafter.

¶9 Clearly, this pattern of conduct called for serious punishment. Even Rosenberg’s attorney candidly acknowledged at the sentencing hearing that “[Rosenberg] is going to get slam dunked.... I know he is going to get tough time.” Rosenberg argued that his conduct had not resulted in any personal injury or property damage. But the trial court aptly responded, “[E]ven moments on a highway when you are under the influence of intoxicants can be very dangerous to the public.”

¶10 The State could well have requested the maximum sentences, totaling thirty-six months. It did not, holding its recommendation to twenty-four months. The trial court rejected this recommendation, choosing instead to impose lesser sentences totaling eighteen months. Rosenberg is fortunate he did not receive greater sentences. The trial court’s sentencing decision and its rejection of Rosenberg’s sentence modification request reflect a proper exercise of discretion.

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

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

