

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 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.

Nos. 99-2129-CR, 99-2130-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN J. ZACK,

DEFENDANT-APPELLANT.

APPEALS from a judgment and an order of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

¶1 CANE, C.J.¹ The sole issue on appeal is whether the trial court erroneously exercised its discretion when sentencing Steven Zack. Because the records show that the trial court reasonably exercised its sentencing discretion, the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

judgment of conviction is affirmed as well as the trial court's order denying Zack's postconviction motion seeking new sentences.

¶2 In April 1998, Zack was convicted upon his no contest pleas of two counts of unlawfully possessing marijuana. The trial court withheld sentence and placed him on probation for two years on each count, to run concurrently. Among the numerous conditions of probation, Zack was required to report to his probation agent as directed. Because Zack failed to report to his probation agent, his probation was revoked and he was returned to court for sentencing in January 1999. After hearing arguments from both sides, the trial court sentenced Zack to six months in the county jail on each count, consecutive to each other. He was also given work release privileges and credit for time previously served in jail.

¶3 In his postconviction motion for a new sentence and again on appeal, Zack contends the trial court failed to give proper weight to all the relevant sentencing factors when imposing the two six-month jail sentences. Therefore, he contends the trial court did not properly exercise its sentencing discretion.

¶4 On appellate review, there is a strong public policy against interfering with the sentencing discretion of a court. *See State v. Perez*, 170 Wis. 2d 130, 142, 487 N.W.2d 630 (Ct. App. 1992). In addition, there is an equally strong presumption that the sentencing court acted reasonably. *See id.* Therefore, the defendant bears the burden of showing that there was some unreasonable or unjustifiable basis for the sentence imposed. *See id.* If the record shows a process of reasoning based upon legally relevant factors, the sentence will be upheld. *See Anderson v. State*, 76 Wis. 2d 361, 364, 251 N.W.2d 768 (1977).

¶5 Also, there must be evidence in the record that the trial court exercised its discretion in imposing sentence. *See id.* at 363-64. The sentencing

court is required to state its reasons for imposing the sentence chosen. *See id.* A sentencing decision should be based primarily on the following factors: the gravity of the offense, the character of the offender and the need for protection of the public. *See Elias v. State*, 93 Wis. 2d 278, 284, 286 N.W.2d 559 (1980). Although all relevant factors must be considered, the sentence may be based on any one or more of the three primary factors. *See Anderson*, 76 Wis. 2d at 364. Finally, a defendant who requests resentencing must show that specific information was inaccurate and that the court actually relied on the inaccurate information in the sentencing. *See State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990).

¶6 This court's review of the records establish that the trial court properly exercised its sentencing discretion. At the hearing, the trial court observed that Zack appeared to not care about being under supervision and disregarded the rules for probation after having been given every chance to comply. The court also noted Zack's past history with marijuana abuse and his cavalier attitude about continuing to use marijuana while on probation. Additionally, Zack failed to participate in the required assessment and treatment programs.

¶7 At the postconviction hearing, the trial court reiterated its reasons for the sentences and rejected any inference that it did not consider the three primary factors in sentencing. The court observed that after only being on probation for approximately two months, Zack absconded, and even during those two months, Zack committed numerous violations by continuing to abuse alcohol and marijuana. Again, the court observed that Zack made no attempt to participate in the alcohol and drug assessment program and did not care about probation. As the

court commented, “That shows a lot about his character.” The trial court denied Zack’s motion for new sentencing.

¶8 This court is satisfied that the trial court did not erroneously exercise its sentencing discretion, as it demonstrated a reasoning process based on the undisputed facts and applied proper legal standards. Accordingly, the judgment of conviction and the order denying Zack’s postconviction motion are affirmed.

By the Court.—Judgment and order affirmed.

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

