

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 31, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 2005AP1131-CR**

**Cir. Ct. No. 2004CF4803**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CLARICE MCGEE,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Clarice McGee appeals from an order denying her postconviction motion for resentencing. Because we conclude that the circuit court did not erroneously exercise discretion at McGee's sentencing or err when it denied her postconviction motion, we affirm the order.

¶2 McGee pled guilty to one count of substantial battery, a felony. She admitted to hitting her boyfriend with a lamp when she discovered him at his home with another woman. After the altercation, McGee went outside and damaged her boyfriend's car, puncturing the tires and breaking the windshield with a tire jack. The circuit court imposed a three-year sentence composed of eighteen months of initial confinement followed by eighteen months of extended supervision. McGee's postconviction motion alleged that the sentence was unduly harsh and resulted from an erroneous exercise of discretion. The circuit court denied the motion and McGee appeals.

¶3 The sentencing court's discretion is guided by three primary factors: the gravity of the offense, the character of the offender, and the need for public protection. *State v. Larsen*, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The weight accorded each factor is within the sentencing court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). Our inquiry is whether discretion was lawfully exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

¶4 The trial court is accorded an additional opportunity to explain its sentence when challenged by postconviction motion. *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). An unduly harsh and excessive sentence must be "so ... unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). "[This court] review[s] a trial court's [postconviction] conclusion that a sentence it imposed was not unduly harsh and unconscionable for an erroneous exercise of discretion." *State v. Giebel*, 198 Wis. 2d 207, 220, 541 N.W.2d 815 (Ct. App. 1995).

¶5 At sentencing, the circuit court began by discussing McGee’s background, character, personality and needs. The circuit court noted that McGee is disabled and “obviously has some kind of vulnerability.” At the same time, the circuit court noted that McGee had a substantial prior record of criminal activity—including convictions of possessing cocaine and receiving stolen property. The circuit court noted that the instant crime was violent, resulting in the victim receiving eighteen stitches. The circuit court reasoned that the instant crime demonstrated McGee’s “willingness to engage in very serious, dangerous, harmful activities” for which McGee had to take responsibility. The circuit court also considered the impact of the crime on the victim and feelings of society about crimes of violence.

¶6 The circuit court specifically addressed whether McGee was a candidate for probation:

She has a substantial prior record, which has been alluded to. If you look at her history in terms of being in facilities or out of facilities, she has a hard time following through with things, difficult time because of being either in a facility or being on some kind of supervision, and she has not always followed through. She may have a good intent, but her acts don’t follow her attitude and her intent. So we really are confronted with a situation where there’s a lack of follow through and lack of continuity then on her part towards prior convictions and prior incarceration.

Probation would not be appropriate. Those routes have been tried before, and she’s continued to commit offenses and commit serious offenses. This is probably her most serious offense as I look at all of her offenses taken together.

¶7 The circuit court’s reasoning was sound, was based on the facts and applied the proper principles of law. We conclude that the circuit court offered sufficient explanation for its rejection of probation for McGee when it concluded

that prior probationary periods had not provided McGee with the rehabilitation she needed and that the seriousness of her offense warranted incarceration. We conclude further that the circuit court offered sufficient explanation for its rejection of the earned release or challenge incarceration program given the violence of McGee's crime. Because the circuit court's reasoning was sound, was based on the facts of record and reflected an application of the proper principles of law, we conclude that no erroneous exercise of discretion occurred when the circuit court imposed sentence on McGee and later denied her motion for sentence modification.

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

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

