

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 15, 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. 2005AP1052-CR**

**Cir. Ct. No. 2004CF64**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**THOMAS E. THOMPSON, JR.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Kenosha County: BARBARA A. KLUKA, Judge. *Affirmed.*

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

¶1 PER CURIAM. Thomas E. Thompson, Jr., appeals from the judgment of conviction entered against him and the order denying his motion for postconviction relief. He argues that the sentencing court erroneously exercised its discretion when it sentenced him and when it denied his motion for sentence

modification. Specifically, he asserts that the court: (1) did not appropriately explain its reasons for the sentence it imposed; (2) departed from the recommendations contained in the presentence investigation report without explanation; (3) neglected treatment for substance abuse as a sentencing objective; and (4) for the same reasons, erroneously denied his motion for postconviction relief. We conclude that the court properly exercised its discretion both when sentencing and when it denied the postconviction motion. Consequently, we affirm the judgment and order of the circuit court.

¶2 Thompson pled guilty to one count of second-degree reckless endangerment. The underlying incident involved a fight with his father during which he attacked his father with a knife. At sentencing, the State recommended that Thompson be sentenced to three years of initial confinement and three years of extended supervision. The PSI writer recommended that he be sentenced from one to two years of initial confinement and three to four years of extended supervision, and Thompson asked for probation. The court sentenced him to two years of initial confinement and four years of extended supervision, to be served consecutively to the sentence after revocation that he was currently serving. Thompson brought a motion for postconviction relief asking the court to reduce his sentence because it was excessive and the product of an erroneous exercise of discretion. The court denied the motion.

¶3 Thompson first argues that the circuit court erroneously exercised its discretion when it sentenced him because it did not consider the appropriate factors nor articulate the reasons for the length of sentence imposed. Relying on *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, Thompson argues that the circuit court did not provide any meaningful sentencing rationale because it did not explain how the sentencing objectives were met by the sentence

the court imposed, nor how the length of the sentence met the sentencing objectives. Specifically, he argues that the court did not explain why it selected six years, why it imposed two years of confinement, and why it rejected probation. He concludes that the sentence was both unreasonable and excessive.

¶4 Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with the discretion. *State v. Mosley*, 201 Wis. 2d 36, 43, 547 N.W.2d 806 (Ct. App. 1996). The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender and the need for the protection of the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The discretion of the sentencing judge must be exercised on a “rational and explainable basis.” *Gallion*, 270 Wis. 2d 535, ¶76 (citation omitted). The weight to be given the various factors is within the trial court’s discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

¶5 Thompson argues, in essence, that *Gallion* created new requirements for sentencing courts. We disagree. The supreme court specifically stated in *Gallion* that the exercise of sentencing discretion “does not lend itself to mathematical precision.” *Gallion*, 270 Wis. 2d 535, ¶49. The court went on to say that it “do[es] not expect circuit courts to explain, for instance, the difference between sentences of 15 and 17 years. We do expect, however, an explanation for the general range of the sentence imposed.” *Id.* As this court recently stated: “The evil *Gallion* sought to remedy was the mechanistic application of the three sentencing factors, in which a circuit court simply described the facts of the case, mentioned the three sentencing factors, and imposed a sentence.” *State v. Fisher*, 2005 WI App 175, ¶22, \_\_\_ Wis. 2d \_\_\_, 702 N.W.2d 56, *review denied*, 2005 WI 136, \_\_\_ Wis. 2d \_\_\_, 703 N.W.2d 379.

¶6 We disagree with Thompson’s contention that the court did not consider the appropriate sentencing factors. The court gave a very thorough explanation for the sentence. The court considered Thompson’s history, noting a pattern of substance abuse and a history of violence, including a previous incident involving a knife. In addition, the court considered that Thompson had a couple of battery charges, including battery to a police officer, disorderly conduct charges, and reckless endangerment. The court, noting that substance abuse can alter a person’s personality, stated that the violence might be related to Thompson’s alcohol use, and suggested that the “key” for Thompson probably was to “lay off” the use of alcohol and drugs. The court considered that Thompson had “a rough upbringing.”

¶7 The court addressed the seriousness of the crime. The court noted the nature of the injuries that Thompson caused to his father, and stated that he was lucky the injuries were not more serious because he could have murdered his father. The court also stated that it had an obligation to the members of the community to make sure they remained safe, and that it would not be fair to the community or the victim if it did not act. The court then imposed a sentence of two years of initial confinement and four years of extended supervision.

¶8 We conclude that the court adequately explained the reasons for the sentence it imposed. The court considered the three factors and explained why it was necessary to incarcerate Thompson. The court then imposed a sentence that was within the sentence recommended by both the State and the writer of the PSI, but greater than the probation Thompson requested. The court did not violate the mandate of *Gallion* nor erroneously exercise its discretion when it sentenced Thompson.

¶9 Thompson next argues that the court deviated from the recommendation of the PSI without adequate explanation. We conclude that this argument is simply wrong on the facts. The PSI recommended a sentence of one to two years of initial confinement and three to four years of extended supervision. The sentence the court imposed fits within this recommendation. While Thompson argues that the court clearly did not consider the PSI, we conclude that the facts belie this contention. The court followed the recommendation in the PSI.

¶10 Thompson also argues that the court did not consider his need for treatment for his substance abuse problem. Again, this is incorrect. The court did address this issue and stated that he would have to get such treatment in the prison setting. The court also considered whether probation would be appropriate and concluded that it would “unduly depreciate” the seriousness of the offense. In sum, we conclude that the court considered all of the appropriate factors and thoroughly explained its reasons for the sentence it imposed. Because the circuit court properly exercised its discretion when sentencing Thompson, it also properly exercised its discretion when it denied his motion for postconviction relief. Consequently, we affirm the judgment and order of the circuit court.

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

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

