

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 21, 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 Nos. 2005AP602-CR  
2005AP603-CR**

**Cir. Ct. Nos. 2003CF6922  
2004CM2272**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JAMES MARTINDALE,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments and an order of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. James Martindale appeals from the judgments of conviction entered against him and the order denying his motion for postconviction relief. He argues that his sentence was unduly harsh and that the

circuit court improperly denied him sentence credit. Because we conclude that the sentence was not unduly harsh and he is not entitled to sentence credit, we affirm.

¶2 Martindale pled no contest to one count of second-degree reckless endangerment, and guilty to two counts of bail jumping, one count each of criminal damage to property, criminal trespass to a dwelling, and resisting or obstructing an officer.<sup>1</sup> The court sentenced him to three years of initial confinement and five years of extended supervision for the reckless endangerment charge, and nine months each in the House of Correction on the remaining charges to be served concurrently to each other and to the other sentence. The court granted him three days of sentence credit on the reckless endangerment charge, and 103 days of credit on the remaining charges. Martindale filed a motion for postconviction relief arguing that the sentence was unduly harsh and asking the court to grant 103 days of sentence credit against the felony sentence as well. The court denied the motion.

¶3 Martindale argues first that his original sentence is unduly harsh and should be modified. 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 trial court is presumed to have acted reasonably and the defendant has the burden to show unreasonableness from the record. *Id.* 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

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<sup>1</sup> Appeal no. 2005AP602 is from the reckless endangerment charge and one count of bail jumping. Appeal no. 2005AP603 is from the other charges.

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.” *State v. Gallion*, 2004 WI 42, ¶¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (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).

¶4 In *Gallion*, the supreme court stated that judges must explain the reasons for the particular sentence they impose. *Id.*, ¶¶39. “How much explanation is necessary, of course, will vary from case to case.” *Id.* The court went on: “In short, we require that the court, by reference to the relevant facts and factors, explain how the sentence’s component parts promote the sentencing objectives.” *Id.*, ¶46. The court went on to state that it did not require mathematical precision. *Id.*, ¶49. “We do expect, however, an explanation for the general range of the sentence imposed. This explanation is not intended to be a semantic trap for circuit courts. It is also not intended to be a call for more ‘magic words.’” *Id.* The court concluded: “The rule of law suffers when the sentencing judge’s discretion is unguided and unchecked. The rationale for sentencing decisions must be made knowable and subject to review.” *Id.*, ¶51.

¶5 Martindale argues that the sentencing court did not justify why the sentence imposed was necessary, that the presentence investigation report prejudiced him, that the court did not give appropriate weight to statements Martindale’s sons made to an investigator, and that the court should have considered that he accepted responsibility and acknowledged his wrong-doing. We disagree. The court gave a very thorough explanation for why it imposed the sentence it did, addressing the appropriate factors. The court also specifically acknowledged that Martindale had accepted responsibility for his actions. The court also considered the statements Martindale’s sons made to the defense

investigator, asking if the investigator had any special training for working with children. The answer to that question was no. Further, the court imposed a sentence that was within the maximum allowed by law. Martindale has not established that the court erroneously exercised its sentencing discretion.

¶6 Martindale also has not established that he is entitled to additional sentence credit. A defendant will receive credit “for all days spent in custody in connection with the course of conduct for which the sentence was imposed.” WIS. STAT. § 973.155(1)(a) (2003-04). Martindale was out on bail on the reckless-endangerment case when he was arrested and remained in custody in the other case. The circuit court gave him credit for the time in custody for the other charges (the concurrent sentences). Because he was technically still out on bail for the reckless-endangerment charge, the circuit court properly determined that he was not entitled to have the credit applied to that case. Consequently, we affirm the judgments and order of the circuit court.

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

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

