

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 2000

Cornelia G. Clark
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. 00-0941-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON LUEPKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Jason Luepke appeals an amended judgment resentencing him to sixteen years and eight months in prison for the second-degree intentional homicide of his mother. Although Luepke's maximum discharge date remained unchanged after resentencing, the new sentence extended Luepke's

mandatory release date by one year. He argues that the sentence is excessive and punishes him for prevailing in his motion for resentencing. We reject these arguments and affirm the judgment.

¶2 In November 1991, the trial court accepted a plea agreement in which Luepke pled guilty to one count of second-degree intentional homicide and not guilty by reason of mental disease or defect to one count of felony theft of a firearm. The court committed Luepke for treatment of his mental disease or defect on the theft charge and imposed a twenty-year sentence on the homicide charge to run concurrent with the commitment. Luepke was transferred to the prison after completing three years and four months under the commitment order. He then filed a motion arguing that the trial court lacked the authority to impose a prison term concurrent with a commitment. The trial court agreed and ordered resentencing. The court then imposed a sixteen-year-eight-month sentence that was stayed until Luepke's release from the commitment order.

¶3 The trial court properly exercised its sentencing discretion when it resentenced Luepke. Luepke must show an unreasonable or unjustifiable basis for the sentence. See *State v. Fuerst*, 181 Wis. 2d 903, 909-10, 512 N.W.2d 243 (Ct. App. 1994). He must demonstrate that the sentence imposed was so excessive as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court reasonably analyzed the primary sentencing factors, the gravity of the offense, Luepke's character and the need to protect the public. It noted that Luepke shot his mother with a gun that he had stolen from his uncle about one month before the killing. He shot his mother nine times in the back of the head, four of the shots being delivered "execution style." He reloaded the pistol during the shooting. At the time of the crime, he

displayed a “significant” lack of remorse. Irrespective of Luepke’s exemplary behavior in prison, the trial court reasonably concluded that the offense merited a lengthy, but not the maximum sentence.

¶4 Luepke cites *Grobarchik v. State*, 102 Wis. 2d 461, 474-75, 307 N.W.2d 170 (1981), to support his argument that the trial court must state reasons on the record for modifying an initial sentence. This requirement is designed to insure that resentencing will not be motivated by a desire to penalize the defendant for exercising his postconviction remedies. Luepke’s reliance on *Grobarchik* is misplaced. The trial court essentially reimposed the same sentence totaling twenty years from the date of the conviction. Calculation of Luepke’s mandatory release date played no role in the initial sentence imposed. The new sentence is not “more severe” merely because the Department of Corrections will recalculate the mandatory release date. The court on resentencing is not required to justify all of the collateral consequences that result from imposing functionally the same sentence. The record in this case contains no evidence of vindictiveness by the court on resentencing, and describing the new sentence as “punishment” for succeeding in Luepke’s postconviction motion seriously mischaracterizes the trial court’s decision. Because the court, on resentencing, attempted to implement the objectives of the original sentencing with no evidence of malice or vindictiveness, there is no basis for overturning the sentence. *See Grobarchik*, 102 Wis. 2d at 475.

By the Court.—Judgment affirmed.

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

