

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 1, 2012

A. John Voelker
Acting 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. 2011AP546-CR

**Cir. Ct. Nos. 2009CF1370
2009CF1379**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN P. LETTENBERGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: JAMES R. KIEFFER, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. Steven Lettenberger appeals from a judgment convicting him of assault by a prisoner and from a postconviction order denying his motion for a new sentencing hearing. We affirm because the circuit court properly exercised its sentencing discretion.

¶2 Lettenberger, who was transferred from the Waukesha county jail to the hospital for treatment, pled guilty to assaulting the sheriff's deputy who was guarding him at the hospital. The criminal complaint alleged that while free from his restraints to use the restroom, Lettenberger obtained a knife and advanced on the deputy while stating that he was going to stab the deputy. Because Lettenberger did not respond to the deputy's commands to stop, the deputy shot Lettenberger. The circuit court sentenced Lettenberger to a nine-year term consisting of six years of incarceration and three years of extended supervision with earned release eligibility.

¶3 Postconviction, Lettenberger sought resentencing because the court ignored Lettenberger's character and gave improper weight to the seriousness of the offense, did not explain why it rejected the presentence investigation report author's recommendation of a lesser sentence, and permitted the deputy to make irrelevant remarks during his victim impact statement. The court denied the postconviction motion, concluding that it had properly exercised its discretion at sentencing.

¶4 On appeal, Lettenberger argues that the circuit court gave improper weight to the seriousness of the offense and ignored Lettenberger's character. The weight of sentencing factors was within the circuit court's discretion. *State v. Steele*, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112. The seriousness of the offense and the defendant's character are relevant factors which may be considered at sentencing. *State v. Gallion*, 2004 WI 42, ¶43 n.11, 270 Wis. 2d 535, 678 N.W.2d 197.

¶5 At sentencing, the circuit court noted that Lettenberger's life began to "spiral out of control" when he could no longer control his alcohol use. The

court noted that Lettenberger did not have a prior criminal history, but in a short period of time he had accumulated bail jumping and weapons charges, and he had assaulted the deputy. The court reviewed Lettenberger's conduct in a local park approximately three months before he assaulted the deputy. Lettenberger was intoxicated, possessed a loaded handgun, and did not comply with the responding officers' commands. Turning to the current crime, the court observed that Lettenberger intended for the deputy to end his life when he menaced the deputy with the knife and forced the deputy to fire his weapon to defend himself and others. The court noted the risk to the deputy and others in the area.

¶6 The court placed great emphasis on the public safety issues arising from Lettenberger's conduct and his disregard for law enforcement. The court found the offense to be "very, very serious" because Lettenberger threatened a law enforcement officer while using a dangerous weapon. The court considered the role of law enforcement officers in the community and the risks those officers face on a daily basis to perform their jobs. Lettenberger showed no respect for law enforcement when he placed the deputy in the position of having to shoot him. In addition, that Lettenberger had threatened an officer did not bode well for public safety. The court observed that the legislature had spoken clearly when classifying the crime as a Class F felony which carries a substantial term that can be enhanced for use of a dangerous weapon. The court noted that Lettenberger was remorseful and expressed concern at sentencing for the impact of his conduct on the deputy. Nevertheless, Lettenberger needed to go to prison for treatment and to protect the public.

¶7 We conclude that the circuit court considered and weighed the appropriate sentencing factors. *Id.* (numerous sentencing factors identified). The court did not ignore Lettenberger's pre-offense character. Rather, the court placed

greater weight on other factors. The circuit court properly exercised its sentencing discretion.

¶8 Lettenberger next argues that the circuit court did not explain why it rejected the presentence investigation report author's recommendation of a five and one-half year sentence. While the presentence investigation report is a factor the circuit court may consider, *id.* the circuit court may weigh that factor along with others, *Steele*, 246 Wis. 2d 744, ¶10 (weight of sentencing factors is within circuit court's discretion). Clearly, factors other than the presentence investigation report's recommendation carried greater weight for the circuit court.

¶9 Finally, Lettenberger complains that the circuit court permitted the deputy to make irrelevant remarks during his victim impact statement. The deputy spoke eloquently about the facts of the crime, the effect of the crime on him and others, and his desire for a significant sentence to protect the public. Lettenberger did not object to the deputy's statement.

¶10 WISCONSIN STAT. § 972.14(3)(a) (2009-10) requires the circuit court to permit the victim "to make a statement in court.... Any statement under this paragraph must be relevant to the sentence." Other than requiring that the victim's statement be relevant, the statute does not limit the contents of the victim's statement. Postconviction, the circuit court noted that it was able to determine what was pertinent in the deputy's statement. If any of the deputy's statement could be deemed not relevant to the sentence, which we need not decide, it is clear that the circuit court did not rely upon any improper information at sentencing. The circuit court had sufficient information from the State and Lettenberger to exercise its sentencing discretion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5. (2009-10).

