

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2012

Diane M. Fremgen
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. 2011AP2568-CR

Cir. Ct. No. 2010CT571

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SCOTT P. WOJCIK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
PATRICK C. HAUGHNEY, Judge. *Affirmed.*

¶1 REILLY, J.¹ Scott P. Wojcik appeals from his conviction for second-offense operating a motor vehicle while intoxicated (OWI). Wojcik argues

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

that his ninety-day sentence is too long. We hold that the circuit court properly exercised its sentencing discretion and uphold the sentence.

BACKGROUND

¶2 On April 9, 2010, Wojcik was pulled over after an officer observed the muffler on Wojcik’s SUV dragging on the ground. Wojcik was unsteady as he exited his vehicle. After failing to successfully perform a field sobriety test, Wojcik leaned up against a mailbox to prevent himself from stumbling and stated, “[J]ust arrest me because I’m too drunk to do this.” Wojcik was arrested and registered .11 percent on an evidentiary breath test.

¶3 Wojcik pled guilty to and was convicted of second-offense OWI. A bail jumping charge was read in as a result of Wojcik missing four of his “intoxicated driver intervention program” appointments. At the sentencing hearing, the State recommended thirty days in jail and Wojcik requested ten. The court imposed a ninety-day sentence, consisting of nineteen days in jail, twenty-one days in a Huber facility, and fifty days on electronic monitoring.²

¶4 Wojcik argues that the circuit court erroneously exercised its sentencing discretion.

² As Wojcik does not contest the forfeiture amount or the length of his driver’s license revocation, we will not address those aspects of his sentence.

STANDARD OF REVIEW

¶5 There is a consistent and strong policy against interference with the circuit court's sentencing discretion. *State v. Davis*, 2005 WI App 98, ¶12, 281 Wis. 2d 118, 698 N.W.2d 823. The circuit court is in the best position to consider the relevant sentencing factors and demeanor of the defendant. *Id.* We presume the circuit court acted reasonably, and the burden is on the appellant to show that the sentence was unreasonable or unjustifiable. *Id.* A sentence is reviewed for an erroneous exercise of discretion. *Id.* A circuit court erroneously exercises its discretion when it relies on clearly irrelevant or improper factors. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

¶6 Circuit courts are required to specify the objectives of the sentence on the record, which include but are not limited to: the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others. *Id.*, ¶40. A circuit court should also indicate the factors it relied on in reaching a sentence. *Id.*, ¶43. The primary sentencing factors are the gravity of the offense, the character of the defendant, and the need to protect the public. *Davis*, 281 Wis. 2d 118, ¶13.

DISCUSSION

¶7 The record reveals that the circuit court properly exercised its sentencing discretion. The court verified that Wojcik understood that the minimum and maximum periods of confinement for his offense were five days and six months in jail, and that the court was not bound by the prosecutor's recommendation.

¶8 In imposing its sentence, the court stated that it was concerned about Wojcik’s missed appointments in the “intoxicated driver intervention program.” The court considered it an aggravating factor that Wojcik stumbled upon getting out of his SUV and that he had to lean against a mailbox on the side of the road so as not to lose his balance. The court also considered the proximity of Wojcik’s prior OWI conviction, which occurred in 2008.

¶9 The circuit court said that it wanted its sentence to serve as a deterrent to prevent Wojcik from driving drunk in the future. It stated a desire to “put some teeth” into the sentence by depriving Wojcik of his freedom via a jail sentence. The court also stated that there was a need for punishment given the closeness of Wojcik’s first OWI offense and how drunk Wojcik was.

¶10 The record indicates that the circuit court properly exercised its discretion. Wojcik’s sentence is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

