COURT OF APPEALS DECISION
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Marilyn L. Graves
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* § 808.10 and RULE 809.62, STATS.

No. 97-0472-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TAWANA D. REED,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed.*

EICH, C.J.[1] Tawana Reed appeals from judgments convicting her of obstructing an officer and possession of THC. She raises one issue on appeal—that the trial court erroneously exercised its discretion in sentencing her to jail. We affirm.

[1] This case is decided by one judge pursuant to § 752.31(2)(f), STATS.

The facts are not in dispute. Beloit police officers executed a search warrant in a home. Reed was present in the home along with two other individuals when the search occurred. When police officers asked her about the identity of one of the two other people in the home, Reed intentionally misidentified him. In conducting their search, the police officers discovered a "blunt," a cigar containing tobacco and marijuana. According to the complaint, Reed confessed to having sold marijuana to support herself and her child. These events led police to arrest Reed and charge her with operating a drug house (a felony) and obstructing a police officer (a misdemeanor). At a preliminary hearing, probable cause was found on both counts.

Pursuant to a plea agreement, the State amended its complaint to two misdemeanors—obstructing an officer and possession of THC—in exchange for Reed's plea of no contest. The State also agreed not to make any sentencing recommendation to the court. Defense counsel requested probation. After considering several factors, the court sentenced Reed to two concurrent six-month terms in the Rock County Jail.

Our review of a sentence is limited to determining whether the trial court erroneously exercised its discretion. ***McCleary v. State,*** 49 Wis.2d 263, 278, 182 N.W.2d 512, 520 (1971). This limited scope of review reflects the strong public policy against interference with the discretion of the sentencing court. We are deferential, at least in part, because the sentencing court "has a great advantage in considering the relevant factors and the defendant's demeanor." ***State v. Roubik,*** 137 Wis.2d 301, 310, 404 N.W.2d 105, 108 (Ct. App. 1987). We presume that the sentencing court acted reasonably and will affirm unless the defendant can "show some unreasonable or unjustified basis in the record for the

sentence complained of." ***State v. Harris,*** 119 Wis.2d 612, 622-23, 350 N.W.2d 633, 638-39 (1984).

A trial court erroneously exercises its discretion when it "fails to state the relevant and material factors that influenced its decision, relies on immaterial factors, or gives too much weight to one sentencing factor in the face of other contravening considerations." ***State v. Thompson,*** 172 Wis.2d 257, 264, 493 N.W.2d 729, 732 (Ct. App. 1992). However, a sentencing court has the discretion to decide the weight of each factor. ***Id.*** A particular factor or characteristic relating to a defendant may be construed by a sentencing court as either a mitigating or an aggravating circumstance depending on "the particular defendant and the particular case." ***Id.*** at 265, 493 N.W.2d at 733. A sentencing court will exceed its discretion as to the length of the sentence imposed only when "'the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***Id.*** at 264, 493 N.W.2d at 732 (citation omitted).

Reed first argues that her sentence was "unduly harsh and unconscionable." She contends that the trial court punished her for the dropped felony charge rather than the possession charge. She claims that the court, in sentencing her, emphasized the seriousness of the dismissed charge and her admission to selling marijuana, rather than the facts surrounding the charges of which she was convicted.[2]

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[2] The trial court stated:

> In the Complaint that I am looking at, ... Ms. Reed essentially admits that she needed extra money to support herself and her

(continued)

A sentencing court does not erroneously exercise its discretion by considering other unproved offenses, because such offenses are "evidence of a pattern of behavior which is an index of the defendant's character, a critical factor in sentencing." ***Elias v. State***, 93 Wis.2d 278, 284, 286 N.W.2d 559, 562 (1980). And where, as here, a defendant does not challenge or dispute the facts brought forth at the sentencing hearing, they are appropriate for the court's consideration. ***State v. Mosley,*** 201 Wis.2d 36, 46, 547 N.W.2d 806, 810 (Ct. App. 1996).

Reed also maintains that the trial court failed to consider positive aspects of her character. In particular, she notes that she enrolled in school, obtained employment and had no past criminal record. However, as the ***Thompson*** court observed, the trial court has discretion in assigning weight to mitigating factors in a sentence. And we note in this regard that the trial court found that Reed last attended school in 1994 and that while she had just enrolled, she had no record of attendance because the semester had not yet started. Reed has not persuaded us that the court's consideration of her personal history and character was unreasonable.

Reed also challenges the court's reliance on the need for deterrence. After explaining its sentence and the factors it considered, the sentencing court said:

> I feel that you need some deterrent here, and ... that's the purpose of this sentence. I hope it serves that purpose. I hope I don't see you back in here again, ... but I'm afraid

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son because of unemployment. There was not enough money, and she started to get ... marijuana to sell. She gave money to an uncle who lives with her, and that ... was basically how she was supporting herself. At least that's what she told the officers at the time of the arrest. The Court's extremely concerned about that kind of conduct, and I believe that ... is a very serious offense ...

> that if we don't send you a message, we're going to be right back in here again with continuing conduct here and you need to extricate yourself from this situation that you've gotten yourself into. You're involved with some bad people and that's ... the reason for the sentencing.

Reed argues that the trial court's reasoning was flawed because the evidence at sentencing indicated that she had "extricated" herself from past associations and activities through gainful employment and education. However, as the quoted passage suggests, the court was also seeking to deter Reed from future criminal behavior. The fact that the trial court did not weigh these factors as heavily as Reed might desire does not invalidate an otherwise appropriate exercise of sentencing discretion.

Relying on ***McCleary***, 49 Wis.2d at 278, 182 N.W.2d at 520, Reed finally argues that the trial court used "irrelevant and improper factors" in sentencing her. She repeats her criticism of the court's reference to the deterrent effect of the sentence, claiming that only "the few who read the newspaper accounts of such a matter" will benefit from this deterrent. That may be, but the appropriateness of deterrence as a sentencing factor does not depend on nigh-impossible calculations of the number of people actually—or even potentially—deterred by a particular sentence. The trial court appropriately exercised its sentencing discretion in this case, and we reject Reed's arguments to the contrary.

By the Court.—Judgments affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.