COURT OF APPEALS
DECISION
DATED AND FILED

March 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1418-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RUMONT KIRKPATRICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

DEININGER, J. Rumont Kirkpatrick appeals a judgment convicting him of possessing more than 100 grams of cocaine with intent to deliver it, within 1000 feet of a public school; and of obstructing an officer. He also appeals an order denying his postconviction motion for sentence modification. He claims the trial court erred in denying his motion to suppress as

evidence the contents of a safe that were seized at the time of his arrest, and that his sentence to the maximum term of imprisonment for the felony drug offense was excessive. We conclude the trial court did not err in denying the suppression motion, and that it did not erroneously exercise its sentencing discretion. Accordingly, we affirm the judgment of conviction and the order denying sentence modification.

BACKGROUND

On January 28, 1996, two police officers responded to a complaint that a marijuana odor was emanating from an apartment in the City of Fitchburg. The officers knocked on the apartment door and a woman, later identified as Lasondra Nicholson, answered the door. After the officers explained their presence, Ms. Nicholson granted them consent to search the apartment. When the officers entered, Kirkpatrick was sitting in a bedroom watching television.

During their search of the apartment, the officers found the following items: (1) a paper bag containing smaller plastic bags that held a total of 369 grams of cocaine base (living room, under couch); (2) a small bag of marijuana (kitchen, on top of refrigerator); (3) a scale with cocaine residue (bedroom closet); and (4) a locked portable safe (bedroom closet). The bedroom in which the safe was located was shared by Nicholson and Kirkpatrick. The officers then arrested both persons, and when Kirkpatrick was searched incident to his arrest, an officer found $1,390 in cash and a set of keys in Kirkpatrick's pocket.

After reading Kirkpatrick and Nicholson their ***Miranda***[1] rights, the officers asked each of them if they knew what was inside the safe. Both Kirkpatrick and Ms. Nicholson answered that the safe belonged to a third party, Enrico Clark, and each denied having a key to the safe. In addition, Kirkpatrick asserted that he did not know what was in the safe and thought it was empty. After receiving these disclaimers, the officers looked for keys that could potentially open the safe. Kirkpatrick watched silently as the police officers attempted to open the safe with numerous keys. The safe was ultimately opened with a key from the ring of keys that had been seized from Kirkpatrick's pocket. Inside the safe, the officers found some 328 grams of crack cocaine and a 9mm pistol.

The State charged Kirkpatrick with, among other offenses, possession of more than 100 grams of cocaine with intent to deliver it, in violation of § 161.41(1m)(cm)5, STATS., 1993-94, which carried an enhanced penalty under § 161.49, STATS., 1993-94, because the offense was alleged to have occurred within 1000 feet of a public school.[2] Kirkpatrick moved to suppress the safe's contents as evidence. Kirkpatrick testified at the suppression hearing that, although the safe belonged to Enrico Clark, he was using it at the time to store his pistol. He also admitted that he had lied when he told police officers that he did not know what was in the safe.

The State told the trial court that Kirkpatrick had "probably demonstrated" a subjective expectation of privacy with regard to the contents of

---

[1] ***Miranda v. Arizona***, 384 U.S. 436, (1966).

[2] The offense and penalty enhancer are now set forth in §§ 961.41(1m)(cm) and 961.49, STATS., respectively.

the safe because he testified at the hearing to that effect. The trial court agreed, concluding:

> I'm satisfied from this record that the subjective test is probably satisfied, at least by the preponderance of the evidence, and that is that this defendant testified that as to the safe itself that he made use of that safe and he placed an object into the safe, [his gun] ….

The court, concluded, however that Kirkpatrick had failed to establish that the "objective test" had been satisfied, that is, that his expectation of privacy was one which society would be willing to recognize as reasonable. On this point, the court commented as follows:

> If in fact there is a denial of any ownership interest, possessory interest, or interest whatsoever in an object by a person who's queried on that issue, and subsequently, that person takes the position that the invasion into that personal property was without his permission and consent, to me, that would leave us in the status of the law that in any instance where a person denied any possessory interest or expectation of privacy, that the law enforcement would not be able to invade that personal property under any form whatsoever, other than ... procuring a search warrant.
>
> …I think that the officers under this set of facts were within their province and within the province of society to conclude that this defendant did not exercise any expectation of privacy in that safe, and therefore, they were not violating his constitutional rights by opening it open up, and that he has no standing to challenge it in any respect.

The trial court thus denied Kirkpatrick's motion to suppress and his subsequent motion to reconsider. A jury found him guilty of the penalty-enhanced felony drug offense and of obstructing an officer, a misdemeanor.[3] The court sentenced Kirkpatrick to the maximum imprisonment of thirty years for the drug

[3] Kirkpatrick was also found guilty and convicted of violating of § 139.95(2), STATS., 1993-94, but the trial court vacated that conviction on Kirkpatrick's postconviction motion. *See* ***State v. Hall***, 207 Wis.2d 54, 557 N.W.2d 778 (1997).

offense, plus the maximum five years imprisonment for the school zone enhancement. A six-month concurrent sentence was imposed on the obstructing charge. Kirkpatrick moved postconviction for sentence modification, which was denied. He appeals the judgment of conviction and the order denying his motion for sentence modification.

ANALYSIS

a. Seizure of Safe Contents

The search and seizure provisions of the United States and Wisconsin Constitutions guarantee the right of citizens to be free from unreasonable searches and seizures. "[We] follow [] the United States Supreme Court's interpretation of the search and seizure provision of the Fourth Amendment in construing the same provision of the Wisconsin Constitution." ***State v. Roberts***, 196 Wis. 2d 445, 452-53, 538 N.W.2d 825, 828 (Ct. App. 1995). Although the question at hand is sometimes referred to in terms of "standing" to raise a Fourth Amendment challenge to a particular seizure, the inquiry is directed toward whether "the disputed seizure infringed on an interest of the defendant which the Fourth Amendment and art. I, sec. 11 [of the Wisconsin Constitution] were designed to protect." ***State v. Harris***, 206 Wis.2d 243, 251, 557 N.W.2d 245, 249 (1996). The issue is thus "a matter of substantive Fourth Amendment law." ***State v. Dixon***, 177 Wis.2d 461, 467, 501 N.W.2d 442, 445 (1993).

Whether Kirkpatrick had an interest protected by the Fourth Amendment in the interior of the safe "depends, in the first place, on whether [he] had a legitimate, justifiable or reasonable expectation of privacy" in that space. ***State v. Rewolinski***, 159 Wis.2d 1, 12, 464 N.W.2d 401, 405 (1990). And, unless he had a legitimate expectation of privacy, the constitutionality of the police

conduct in seizing the items from the safe "does not come into question." ***Id.*** Our threshold inquiry, moreover, involves two separate questions:

> The determination of whether the defendant had a reasonable expectation of privacy depends on two separate questions. The first question is whether the individual by his conduct exhibited an actual, subjective expectation of privacy. The second question is whether such an expectation is legitimate or justifiable in that it is one that society is willing to recognize as reasonable.

Id. at 13, 464 N.W.2d at 405. Kirkpatrick bears the burden of proving, "by a preponderance of the credible evidence," both that he manifested a subjective expectation of privacy in the contents of the safe and that his expectation was reasonable. ***Id.*** at 16, 464 N.W.2d at 406-07.

Here, the State all but conceded at the suppression hearing, and the trial court subsequently determined, that Kirkpatrick met his burden of establishing a subjective expectation of privacy in the safe's interior because he testified at the suppression hearing that he was using Clark's safe to store his pistol. On appeal, however, the State argues that "by disclaiming ownership of the safe, the defendant did not, *by his conduct, exhibit* an actual subjective expectation of privacy" (emphasis in original). *See* ***id.*** at 13, 464 N.W.2d at 405. For reasons we discuss below, we agree. We first address, however, Kirkpatrick's assertions that this court may not make an independent determination regarding Kirkpatrick's subjective expectation of privacy in the interior of the safe, and further, that we should not even consider the issue on appeal because the state failed to raise it in the trial court.

Kirkpatrick argues that the court's finding on the issue was one of fact which we may not disturb unless it was "clearly erroneous." We agree that we may not disturb a trial court's findings regarding evidentiary or historical facts

unless they are contrary to the great weight and clear preponderance of the evidence. ***State v. Woods***, 117 Wis.2d 701, 715, 345 N.W.2d 457, 465 (1984).[4] However, we independently determine questions of "constitutional fact," which are not actually "facts" in themselves, but are questions which require the "'application of constitutional principles to the facts as found.'" ***Id.*** (quoted source omitted). Our overall inquiry into whether the undisputed facts and those found by the trial court give rise to a legitimate expectation of privacy, such that Kirkpatrick may challenge the seizure of the items from the safe, is a matter of law which this court decides de novo. ***Rewolinski***, 159 Wis.2d at 17, 464 N.W.2d at 407. While the inquiry may be analytically divided into a subjective component and an objective one, that does not mean that the question of whether Kirkpatrick exhibited a subjective expectation of privacy in the safe is any less a "constitutional fact" (i.e., a question of law), than is the reasonableness of that expectation. *See, e.g.,* ***Woods***, 117 Wis.2d at 715-16, 345 N.W.2d at 465 (voluntariness of a confession, although "a matter of fact," is a question which

[4] The "clearly erroneous" standard is essentially the same standard as one which considers whether a finding is "contrary to the great weight and clear preponderance of the evidence." *See* ***Figliuzzi v. Carcajou Shooting Club,*** 184 Wis.2d 572, 589 n.7, 516 N.W.2d 410, 417 (1994).

"must be independently determined by this [appellate] court") (alteration in original).[5]

Kirkpatrick's waiver argument relies on ***State v. Van Camp***, 213 Wis.2d 131, 144, 569 N.W.2d 577, 584 (1997), where the supreme court concluded that the State had waived the issue of whether a defendant had made a sufficient allegation in pleading a motion by its failure to raise the issue before the trial court. The court noted that the State's failure to raise the pleading issue in the trial court prevented the defendant from curing the omission and prevented the trial court from considering the claimed defect. ***Id.*** Here, however, Kirkpatrick was given a full opportunity to make a factual record on his subjective expectation of privacy in the safe, and to argue the issue to the trial court, which then expressly considered and ruled on the question. We thus conclude that Kirkpatrick's waiver argument must fail, and that this case is governed by the rule that a respondent may advance for the first time on appeal any argument that would sustain the trial court's ruling, even one that claims, in effect, that the trial court reached the

[5] While we decline to treat the question as one of historical or evidentiary fact, were we to do so, we might well reach the same result. It appears that the trial court (and the prosecutor) may have "clearly erred" in focusing exclusively on Kirkpatrick's testimony at the suppression hearing regarding his use of the safe, which he intentionally concealed from the police, instead of considering whether he "*by his conduct exhibited* an actual, subjective expectation of privacy" at the time of his arrest. ***State v. Rewolinski***, 159 Wis.2d 1, 13, 464 N.W.2d 401, 405 (1990) (emphasis added). We note that the prosecutor's "concession" that a subjective expectation of privacy "probably has been demonstrated here" was expressly qualified by her statement that "Mr. Kirkpatrick has at least gotten up here and … said that he had an expectation of privacy probably in that [safe]." The court, too, focused on that testimony: "the subjective test is probably satisfied … this defendant testified that as to the safe itself that he made use of that safe and he placed an object into the safe." The court later also concluded, however, "that the officers under this set of facts were within their province … to conclude that this defendant did not exercise any expectation of privacy in that safe," indicating the court's apparent belief that Kirkpatrick's conduct at the time of his arrest failed to communicate any expectation of privacy to the officers.

proper result but for the wrong reason. *See* ***State v. Holt***, 128 Wis.2d 110, 124-25, 382 N.W.2d 679, 687 (Ct. App. 1985).

We now address the merits of Kirkpatrick's assertion that the trial court erred in concluding that he had no reasonable expectation of privacy in the interior of the safe and therefore could not challenge the confiscation of its contents. Kirkpatrick first urges us to adopt a "'bright-line' rule that a defendant has standing to object to the warrantless search of a locked safe kept in his home." We decline to do so, first, because bright-line rules in the area of search and seizure are not favored. ***Ohio v. Robinette***, 519 U.S. ___, 117 S. Ct. 417, 421 (1996) ("[W]e have consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry."). Moreover, we are an error-correcting court whose primary responsibility is to decide the case before us, not to develop and declare the law of this state. ***Jackson v. Benson***, 213 Wis.2d 1, 18, 570 N.W.2d 407, 415 (Ct. App. 1997). We will thus review whether, under the facts and circumstances of this case, Kirkpatrick had a reasonable expectation of privacy with regard to the interior of the safe. *See* ***Dixon***, 177 Wis.2d at 470, 501 N.W.2d at 446 ("We must examine the totality of the circumstances to determine whether the defendant had an expectation of privacy ….").

As we have noted, the first part of our review focuses on whether Kirkpatrick established that, by his conduct, he exhibited a subjective expectation of privacy in the interior of the safe at the time of his arrest. Kirkpatrick argues that he did, because: (1) the safe was locked and located in a closet in his bedroom; and (2) he had the key to the safe in his possession, which he did not voluntarily relinquish to police. He urges us to reject the State's claim that he "abandoned" any expectation of privacy in the safe's contents by denying ownership of the safe and disclaiming knowledge as to its contents. *See* 5 W.

LaFave, SEARCH AND SEIZURE § 11.3 at 128 (3d ed. 1996) (abandonment of property should be distinguished from mere disclaimer of ownership; better view is that failure to make incriminating admissions in response to police inquiries does not defeat standing).

The State cites ***State v. Roberts***, 196 Wis.2d 445, 538 N.W.2d 825 (Ct. App. 1995), in support of its argument that Kirkpatrick abandoned any expectation of privacy he may have had in the safe's interior by his statements to police at the time of his arrest (which he later admitted were untrue). In ***Roberts***, however, our holding was quite narrow: "Roberts did not have a legitimate expectation of privacy in his automobile after he fled to evade the police." ***Id.*** at 449, 538 N.W.2d at 827. Although we discussed the concept of "abandonment," noting that the use of the term in the context of the Fourth Amendment was distinct from its application in property law, ***id.*** at 454, 538 N.W.2d at 829, we did not analyze the concept outside the context of the facts of that case. The State also refers us to numerous cases from federal courts and those in other states which address the abandonment concept. As Kirkpatrick points out, however, most of the cases cited by the State deal with more portable items, such as suitcases and articles of clothing, and with locales that are public, or at least outside the confines of one's own home, such as airports and hotel rooms.

We do not find it necessary to consult cases from other jurisdictions because the Wisconsin Supreme Court has specifically addressed the question of whether a defendant who disclaims ownership of a container located in his or her residence, and who denies knowledge of its contents, thereby fails to exhibit by conduct, a subjective expectation of privacy with regard to the contents of the container. In ***State v. Milashoski***, 163 Wis.2d 72, 471 N.W.2d 42 (1991), firefighters had responded to an explosion in Milashoski's parents' vacation home

which he was occupying at the time. ***Id.*** at 76, 471 N.W.2d at 44. After the flames had been doused, the firefighters inspected the home to ensure that the fire was completely extinguished. ***Id.*** During this inspection, the volunteer firefighters, some of whom were also police officers, found five liquid-filled containers in the basement, three of which were unlabeled. ***Id***. at 76-77, 471 N.W.2d at 44.

Knowing that the liquids in some of the containers were combustible, and not knowing what was in the unlabeled containers, the firefighters removed all five containers from the home and took them to the village safety building. ***Id***. at 77, 471 N.W.2d at 44. Later that evening, a police officer interviewed Milashoski in the hospital. ***Id***. at 77-78, 471 N.W.2d at 44. The officer testified at trial that "Milashoski told him he did not know the nature of the containers found in the basement…. [and] speculated that [they] may have been left ... by the previous owner of the home." ***Id***. at 78, 471 N.W.2d at 44. Four days later, the authorities shipped the unmarked containers to the state crime laboratory where their contents were analyzed. ***Id***. Two of the unlabeled containers were found to contain a carcinogenic substance, while the third held a controlled substance commonly known as PCP. ***Id***.

The State charged Milashoski with manufacturing PCP, and he moved to suppress the physical evidence on grounds that the warrantless seizure of the containers, and the testing of their contents, violated his constitutional rights. In affirming the trial court's denial of the suppression motion, the supreme court concluded that the denial of ownership and knowledge of the contents of the containers was inconsistent with a subjective expectation of privacy. ***Id***. at 86, 471 N.W.2d at 48. After setting forth the dual inquiry required by ***Rewolinski***, the court stated:

> Milashoski's conduct must have exhibited an actual, subjective expectation of privacy in the containers. Granted, by the time the firefighters removed the containers to the safety building, Milashoski was already in the hospital and did not have an opportunity to express an interest in the containers. Since the containers were found in Milashoski's parents' home, in which he claimed he had been "making perfume," it certainly would have been reasonable for the firefighters to at least suspect, if not assume, that the containers probably belonged to Milashoski. But when he was asked about the containers in the hospital, Milashoski stated that the chemicals he was working with in the kitchen burst into flames, and he had no idea what was in the containers in the basement. He speculated that they could have been left there by the previous owner. His statement to the officer who was interviewing him does not exhibit an actual, subjective expectation of privacy in the containers. In fact, his statement would lead a reasonable person to believe that the containers were not his at all. Milashoski's assertion to the officer (which turned out to be untruthful) was inconsistent with a subjective expectation of privacy.

Id. at 85-86, 471 N.W.2d at 48.

As in ***Milashoski***, the officers here were lawfully on premises occupied by Kirkpatrick as his residence, since they had been given consent to enter and search by a co-occupant. Also, as in ***Milashoski***, the officers came across a container that aroused their suspicions regarding a matter they were investigating: there, that the contents of the containers would provide evidence as to the cause of the explosion and fire; here, that the safe might hold additional evidence of drug trafficking. Kirkpatrick's verbal disclaimer of ownership and knowledge of contents closely parallels the disclaimer in ***Milashoski***. While Milashoski presumably had little or no opportunity after his disclaimer to object to the testing of the containers' contents, Kirkpatrick did have the opportunity to object to the opening of the safe following his statements to the police. He made no objection, however, and instead, sat silently as he observed the police officers try various keys in the safe's lock, including the one from his key ring which proved successful.

In short, we conclude that ***Milashoski*** is controlling on the present facts. We are unpersuaded that ***United States v. Issacs***, 708 F.2d 1365 (9th Cir. 1983), cited by Kirkpatrick as having "remarkably similar" facts to those before us, points to a different result. In ***Issacs***, Secret Service agents searched a defendant's residence pursuant to a warrant, during which the agents noticed a safe in a bedroom closet. ***Id***. at 1366. The defendant did not deny his possessory interest in the safe, and indeed, he assisted the agents by giving them the combination to it. ***Id***. The safe contained journals, one of which recorded drug transactions. ***Id***. The defendant appealed the trial court's denial of his motion to suppress the journals as evidence. ***Id***. at 1366-67. At trial, the defendant had denied ownership and awareness of the *journals*. ***Id***. at 1367. The court concluded that even though a defendant may, by abandoning a once-possessed item, subsequently renounce any expectation of privacy in it, on the facts before it, the defendant had not done so. ***Id.*** at 1368. Rather, the court concluded that the defendant's reasonable expectation of privacy in the safe itself ("the space invaded") was unaffected by a disclaimer as to some of its contents, and thus he was entitled to contest the lawfulness of the seizure of its contents.[6] ***Id***. The court upheld the denial of the suppression motion, however, on other grounds. ***Id.***

[6] A similar distinction was drawn by the supreme court in ***State v. Dixon***, 177 Wis.2d 461, 501 N.W.2d 442 (1993). In ***Dixon***, the defendant was stopped for a traffic violation, and when the officer looked into his truck, he saw a brick-shaped package, wrapped in newspaper, on the floor behind the front passenger seat. ***Id***. at 465, 501 N.W.2d at 444. The police officer seized the package from the truck and the defendant moved to suppress what turned out to be cocaine found in the truck. ***Id***. He testified that "the package was not his, that he did not see the package in the vehicle, and that he did not know the package contained cocaine." ***Id***. The court rejected the State's argument that these statements constituted conduct refuting any expectation of privacy, noting "the defendant is not asserting his fourth amendment rights in regard to the seized item; he is challenging the search of the interior of the truck." ***Id.*** at 468 n.7, 501 N.W.2d at 445. (The court held that, "under the totality of the circumstances the defendant had an expectation of privacy in the interior of the vehicle that society is willing to recognize as reasonable."). ***Id***. at 470, 501 N.W.2d at 446.

We conclude that Kirkpatrick failed to establish that, by his conduct, he exhibited an actual, subjective expectation of privacy with respect to the interior of the safe. We need not address, therefore, his argument that society is willing to accept as reasonable an individual's expectation of privacy with respect to a locked safe kept in one's bedroom closet.

b. Sentencing Discretion

The thirty-five-year sentence imposed on Kirkpatrick for the possession with intent to deliver offense constitutes the outer limit of the trial court's sentencing discretion, inasmuch as it represents the statutory maximum that could be imposed for the penalty-enhanced drug offense. This court may not have chosen to impose the maximum term of imprisonment had we been the sentencing court, but that is not the test we apply when reviewing the exercise of sentencing discretion on appeal. Appellate courts in Wisconsin adhere to a strong policy against interference with the discretion of a trial court in passing sentence. Appellate judges should not substitute their sentencing preference merely because, had they been in the trial judge's position, they would have meted out a different sentence. In reviewing a sentence to determine whether discretion has been properly exercised, "'the court will start with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.'" ***State v. Macemon***, 113 Wis.2d 662, 670, 335 N.W.2d 402, 407 (1983) (quoted source omitted).

Kirkpatrick argues that the thirty-five-year sentence was excessive because he was eighteen years old at the time of the offense and had only one prior drug conviction, and that was as a juvenile. He claims that while the trial court recited the relevant sentencing considerations, it "apparently took only one of the

factors [deterrence] into account when imposing the maximum sentence." Kirkpatrick asserts that the court erroneously exercised its sentencing discretion by placing undue emphasis on deterrence and giving insufficient consideration to the "individual circumstances of this defendant and this crime." Finally, he argues that the maximum, thirty-five-year term of imprisonment should be "reserved for the older, violent, repeat offenders who have refused to respond to punishment and rehabilitative efforts." We conclude that the sentence imposed on Kirkpatrick, while harsh, was not excessive or an erroneous exercise of the trial court's sentencing discretion.

At the sentencing hearing, the prosecutor urged the trial court to impose forty years of imprisonment,[7] noting that the amount of crack cocaine seized from Kirkpatrick's apartment represented, at the time, the largest single seizure of the controlled substance in Dane County. The prosecutor also noted Kirkpatrick's lengthy involvement with drug trafficking, despite his age, as described in the presentence report, and the presence of a loaded pistol, as aggravating factors. Kirkpatrick's trial counsel acknowledged there was no dispute that his client "sold a hell of a lot of crack cocaine," but, making many of the same arguments raised on appeal, he requested the court to impose ten to fifteen years and to recommend Kirkpatrick for participation in the "Challenge Incarceration Program" under § 302.045, STATS. The author of the presentence investigation made the following recommendation:

[7] The State recommended thirty-five years on the enhanced possession with intent to deliver charge, plus five years consecutive on the drug tax stamp violation. The court imposed a five-year sentence for the tax stamp offense, but ordered it to be served concurrently with the thirty-five-year sentence on the possession with intent to deliver conviction. The tax stamp conviction and sentence were subsequently vacated. *See* n.3.

> To not incarcerate Rumont Kirkpatrick for a significant period of time would unduly depreciate the extreme seriousness of this offense. Drug dealing is an offense which has great impact on this community and warrants significant incarceration to demonstrate this point. It is also clear that confinement is necessary to protect the public from further criminal behavior on this defendant's part.

The trial court expressly considered Kirkpatrick's background and character, his rehabilitative needs, the severity of the offense, and the need for deterrence and protection of the public. While the court reviewed each of these considerations and acknowledged that counsel had highlighted the relevant sentencing criteria in their arguments, there is no question that public protection and deterrence were prominent in the court's considerations:

> The protection of society is an extreme factor as far as this court is concerned ….
>
> …The most compelling force to the court in the imposition of sentence in a case like this is deterrence …. [T]he message has to be sent to that element that wishes to invade this community with what is now recognized as the most addictive drug known to society.

All of the matters cited by the trial court are appropriate considerations in sentencing, and the record does not support Kirkpatrick's contention that the court focused only on deterrence to the exclusion of other relevant considerations. A trial court has broad discretion in determining the weight to be given to each sentencing factor, ***State v. Thompson***, 172 Wis.2d 257, 264, 493 N.W.2d 729, 732 (Ct. App. 1992), and we cannot fault the trial court for frankly stating which were the most significant factors influencing its sentencing decision in this case.

A trial court exceeds its discretion in imposing a lengthy prison term "only where 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."

Ocanas v. State, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). As Kirkpatrick points out in his brief, the supreme court has concluded the legislature intends that maximum sentences are to be reserved for the more aggravated breaches of the criminal statutes. ***McCleary v. State***, 49 Wis.2d 263, 275, 182 N.W.2d 512, 518-19 (1971). The trial court here imposed a maximum sentence on what it determined "was the largest drug bust in Dane County history … as far as crack cocaine was concerned," and we cannot conclude that the sentence was one which shocks public sentiment.

We conclude that the trial court did not erroneously exercise its discretion in imposing sentence on the felony drug conviction, or in denying Kirkpatrick's motion for sentence modification.

CONCLUSION

For the reasons set forth above, we affirm the judgment of conviction and the order denying postconviction relief.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.