COURT OF APPEALS
DECISION
DATED AND FILED

August 18, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0063-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TROY DAVIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County: CONRAD A. RICHARDS, Judge. *Affirmed.*

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

PER CURIAM. Troy Davis appeals his consecutive twenty-year prison term on two counts of first-degree recklessly endangering safety and five counts of second-degree recklessly endangering safety. He pleaded no contest to the charges as a party to the crime. Davis received two five-year sentences on the

two first-degree recklessly endangering safety charges and five two-year sentences on the five remaining charges.

Davis and his coassailants opened fire with .22 automatic rifles on bar patrons standing outside a bar near closing. They emptied all but one round from their clips; Davis' gun jammed on his seventh and last round. Two rounds hit a bar patron, and others hit the bar and a parked car. Davis had used alcohol and drugs before the incident.

Davis makes two arguments on appeal: (1) the consecutive twenty-year prison term constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution; and (2) the sentence constitutes an erroneous exercise of trial court sentencing discretion. We reject Davis's arguments and therefore affirm Davis' twenty-year prison sentence.

The standard of review for sentences is well established. A sentence will not be considered excessive unless there is a clear abuse of judicial discretion. ***State v. Morales***, 51 Wis.2d 650, 658, 187 N.W.2d 841 (1971). As was stated in ***Hanson v. State***, 48 Wis.2d 203, 207, 179 N.W.2d 909, 911 (1970):

> A trial judge clearly has discretion in determining the length of a sentence within the permissible range set by statute. The standard by which cruel and unusual punishment is determined does not preclude a sentence within the permissible statutory range from constituting cruel and unusual punishment and thus a reversible abuse of discretion on the part of the trial judge. However, this court has stated many times that review of a sentence of a lower court is guided by a strong policy against interference with the lower court's discretion. ***Cheney v. State***, 44 Wis.2d 454, 468, 171 N.W.2d 339, 346, 174 N.W.2d 1 (1969); ***Finger v. State***, 40 Wis.2d 103, 111, 161 N.W.2d 272, 276 (1968).

The trial judge must state his reasons for imposing the sentence and this court has taken into consideration all the factors shown in the record to give support to any sentencing determination which is made. ***State v. Morales***, supra; ***State v. Guy***, 55 Wis.2d 83, 91, 197 N.W.2d 774, 778 (1972); ***Lange v. State***, 54 Wis.2d 569, 577, 196 N.W.2d 680, 685 (1972).

Davis' twenty-year sentence does not constitute cruel and unusual punishment. The Eighth Amendment bars disproportionate sentences. A sentence is constitutionally offensive if it is so excessive, unusual, and disproportionate to the offense committed that it shocks public sentiment and violates the judgment of reasonable people. *See* ***State v. Pratt***, 36 Wis.2d 312, 322, 153 N.W.2d 18, 22 (1967). Here, Davis pleaded no contest to two counts of first-degree recklessly endangering safety and five counts of second-degree recklessly endangering safety. The court noted that Davis committed serious crimes that reasonable people would conclude called for a substantial punishment. Davis indiscriminately opened fire with an automatic rifle on a group of innocent bystanders. He put the health and safety of several people at risk, and his acts, as the trial court observed, could have had more tragic consequences, including death.[1]. In light of the indiscriminate character of Davis' crimes, we see nothing in Davis' twenty-year consecutive sentence on seven counts that shocks public sentiment or violates the judgment of reasonable people.

For the same reasons, we further see no erroneous exercise of trial court sentencing discretion. Here, Davis stood convicted of seven serious crimes,

[1] We note that, from a broader standpoint, that the prosecution dropped four counts, including attempted first-degree intentional homicide. Davis would have faced a forty-year prison term on that charge alone

and the trial court at the outset had discretion to impose a substantial prison term. The trial court examined the seriousness of Davis' crimes, his character, and the clear danger he posed to the public. The trial court also emphasized the interests of deterrence and the need to send a strong message to the community. *See* ***State v. Sarabia,*** 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). Beyond that, the trial court conducted a well-balanced review of other factors, such as Davis' age, his learning disabilities, his drug and alcohol use, his chances at rehabilitation, and the drive-by nature of the shooting. Foremost in the trial court's analysis, however, were the interests of public safety and the need to keep dangerous people like Davis from doing more harm. We are satisfied that the trial court's sentence was commensurate with Davis culpability, the severity of his crimes, the decided danger he posed to the public, and the need to deter Davis and like-minded wrongdoers from such crimes. In short, we see nothing excessive in Davis' twenty-year prison term on seven counts.

By the Court.—Judgment affirmed.

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