COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1349-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DEBRA A. SLEDGE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: STANLEY A. MILLER and JEFFREY A. KREMERS, Judges. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Debra A. Sledge appeals, *pro se*, from a judgment entered after she pled guilty to one count of first-degree reckless homicide, contrary to § 940.02(1), STATS. She also appeals from an order denying her postconviction motion seeking sentence modification. Sledge claims: (1) her

guilty plea was not knowingly, voluntarily and intelligently entered; (2) a new factor exists that warrants modification of her sentence; and (3) her sentence was unduly harsh and excessive. Because Sledge failed to seek plea withdrawal in a postconviction motion, because no new factor exists, and because the sentence was not unduly harsh or excessive, we affirm.

I. BACKGROUND

Sledge was charged with the first-degree reckless homicide of six-year-old Devin Windom, who had been abandoned by her biological mother and given to Sledge to raise as her own child. According to the medical examiner who performed the autopsy, Windom was severely beaten, causing cerebral edema, contusions to the scalp, bruising to the left eye and other blunt force trauma to the head, arms, legs, buttocks and back, all of which proved fatal.

On January 24, 1997, at the plea hearing, Sledge initially tendered a no contest plea because of possible "civil ramifications." The trial court indicated that it was not inclined to accept a no contest plea. After further discussion with her counsel, Sledge pled guilty.

Prior to sentencing, a number of psychiatric and psychological reports were filed with the court, indicating that Sledge suffered from hyperthyroidism and that the medication propranolol, which Sledge had been taking at the time the crime occurred, has reportedly caused side effects such as depression, insomnia and hallucinosis.

On February 21, 1997, Sledge was sentenced to thirty years in prison. In April 1998, Sledge moved to modify the sentence on the basis that new factors existed and that the sentence imposed was unduly harsh and excessive.

Specifically, she alleged that the effects of her hyperthyroid condition (Graves' disease) and the toxic psychosis, as a result of taking propranolol, were new factors that warranted sentence modification. The trial court denied the motion, ruling that a new factor was not presented because it was known at the time of sentencing that Sledge suffered from both hyperthyroid disease and hallucinations caused by propranolol. The trial court also ruled that the sentence was not unduly harsh or excessive. Sledge now appeals.

II. DISCUSSION

A. Improper Plea.

Sledge asserts that her plea was improper because she was coerced into changing her initial no contest plea to a guilty plea. We decline to address this issue because Sledge failed to raise it before the trial court, *see* ***State v. Rogers***, 196 Wis.2d 817, 826, 539 N.W.2d 897, 900 (Ct. App. 1995) (failure to raise a specific challenge in the trial court waives the right to raise it on appeal), and inadequately briefed the argument to this court, *see* ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992) (We may decline to review an issue that is inadequately briefed.).

B. New Factor.

Sledge next claims her hyperthyroid disease and toxic psychosis caused by propranolol are new factors that warrant sentence modification. We do not agree. A "new factor" is

> "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties."

State v. Hegwood, 113 Wis.2d 544, 546, 335 N.W.2d 399, 401 (1983) (quoting ***Rosado v. State***, 70 Wis.2d 280, 288, 234 N.W.2d 69, 73 (1975)). Whether a set of facts satisfies the legal definition of "new factor" presents an issue of law which we review independently. *See* ***id.*** at 547, 335 N.W.2d at 401.

As noted by the trial court in ruling on the postconviction motion, both factors Sledge alleges to be new were known to the trial court when it imposed sentence. The record confirms this. Several of the reports filed with, and considered by, the court refer to Sledge's hyperthyroidism and the fact that she experienced hallucinations. One of the reports referred to the possible side effects of propranolol and indicated that this medication was related to Sledge's abusive behavior toward the victim. Accordingly, we agree with the trial court's conclusion that Sledge has failed to meet her burden of proof.

C. Excessive Sentence.

Finally, Sledge claims that the sentence she received was unduly harsh and excessive. We disagree. Appellate review of sentencing is limited to a two-step inquiry. The first question is whether the trial court properly exercised its discretion in imposing the sentence, and the second question is, if it did, whether the trial court erroneously exercised that discretion by imposing an excessive sentence. *See* ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984).

It is a well-settled principle of law that the trial court exercises discretion in sentencing and, on appeal, review is limited to determining if discretion was erroneously exercised. ***State v. Echols***, 175 Wis.2d 653, 681, 499 N.W.2d 631, 640 (1993). The primary factors to be considered by the trial court

are the gravity of the offense, the character and rehabilitative needs of the offender, and the need to protect the public. ***Id.*** at 682, 499 N.W.2d at 640.

It is clear from the sentencing transcript that the trial court considered the proper factors when it imposed sentence. The trial court referred to the gravity of the crime as being "tantamount to torture." The trial court also addressed Sledge's rehabilitation needs, noting that the sentence would need to be a substantial amount of time to allow Sledge to "come to grips" with what she did. Finally, the trial court considered the need to protect the public in determining that the thirty-year sentence was appropriate. Thus, the record supports a conclusion that the trial court properly exercised its discretion in imposing sentence.

The remaining issue is whether the sentence imposed was unduly harsh or excessive. A sentence is unduly harsh and excessive when it is "so disproportionate to the offense committed as to shock the 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). Under this standard, we cannot conclude that the thirty-year sentence was unduly harsh. The crime was horrific, even more so because the victim was a helpless child unable to defend herself from the repeated beatings suffered at the hands of her mother-figure. Further, Sledge did not receive the potential forty-year maximum that could have been imposed. Under these circumstances, the

sentence imposed does not "shock public sentiment." It was not unduly harsh or excessive.[1]

By the Court.—Judgment and order affirmed.

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

[1] Sledge also complains that her motion was denied without an evidentiary hearing. Her specific contention was that in "the interest of justice, the trial [c]ourt should have held an evidentiary hearing to determine if manifest injustice exists in the excessive sentence imposed." Sledge fails to cite any authority requiring a hearing under the circumstances presented here and fails to adequately develop this contention. Accordingly, we decline to address it. *See* ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992); ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980).