

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 25, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1307-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEE CROUTHERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Lee Crouthers appeals from a judgment convicting him of armed robbery and from the order denying his postconviction motion for sentence modification. He claims the trial court erroneously exercised its discretion by failing to adequately explain the sentence it imposed. We conclude

that the trial court's discussion of the relevant factors was sufficient to sustain the presumption of reasonableness we accord to sentencing decisions. Accordingly, we affirm.

BACKGROUND

¶2 Lee Crouthers was charged with being party to the crime of armed robbery after he entered a service station with an accomplice who threatened a sixty-five-year-old employee with a semi-automatic weapon while Crouthers took money from the cash register and some lottery tickets from the counter. Crouthers eventually agreed to plead no contest in exchange for having the prosecutor recommend a seven-year sentence. A presentence investigation report noted that Crouthers had a prior criminal record dating back to 1980, including three convictions for misdemeanor theft, two for burglary, one for issuing worthless checks, and another three for misdemeanor retail theft.

¶3 At the sentencing hearing, the trial court stated that it considered the offense to be "extremely grave" and "very serious" because a weapon was involved and a person was threatened with that weapon. With regard to the defendant's character, the trial court noted that Crouthers' prior offenses showed an escalating pattern of violence, he had apparently lied to the presentence investigator about having a college degree, he had been unemployed at the time of the offense and unable to comply with the conditions of prior periods of probation, and he tended to minimize and justify his conduct. The court also indicated that the public had an "absolute right" to be free from armed robberies in general, and from Crouthers' dangerousness in particular, and it observed the State had already given Crouthers something of a break by not alleging habitual criminality. The trial court concluded that the State's recommendation was not "appropriate at all"

and it sentenced Crouthers to thirty years in prison. Crouthers moved to modify the sentence and appealed after his motion was denied.

STANDARD OF REVIEW

¶4 We review sentencing determinations under the erroneous exercise of discretion standard. A court properly exercises discretion when it considers the facts of record under the relevant law and reasons its way to a rational conclusion. *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991). The law relevant to sentencing determinations is well settled and not disputed on this appeal. The trial court is required to consider the nature of the offense, the character of the offender, and the need to protect the public.¹ *State v. Mosley*, 201 Wis. 2d 36, 43-44, 547 N.W.2d 806 (Ct. App. 1996). Because the trial court is in the best position to consider these factors and the demeanor of the defendant, we are reluctant to interfere with its sentencing discretion. *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). Thus, sentence determinations which are not explicitly based upon an improper factor or otherwise illegal as a matter of law, and which are not so disproportionate as to “shock the conscience” and thus violate the Eighth Amendment, are given a presumption of reasonableness in this state. See, e.g., *State v. Paske*, 163 Wis. 2d 52, 69-70, 471 N.W.2d 55 (1991); *Harris*, 119 Wis. 2d at 622.

¹ There are a number of related, secondary factors to be considered as relevant, including: (1) the defendant’s past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant’s personality, character, and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant’s culpability; (7) defendant’s demeanor at trial; (8) defendant’s age, educational background, and employment record; (9) defendant’s remorse, repentance, and cooperativeness; (10) defendant’s need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention. *State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984).

ANALYSIS

¶5 Crouthers concedes that the trial court recited the factors generally applicable to sentence determinations. He claims, however, that the trial court's application of those factors was unreasonable for several reasons. He argues that the trial court's comments that his offense was serious because it involved a threat with a weapon and that the public should be protected from armed robberies would apply equally to every armed robbery, and that such generalized statements could support any sentence from the minimum to the maximum. In addition, he challenges the trial court's characterization of his prior record as representing an "escalating" pattern of violence and dangerousness, given that his two prior felonies were interspersed over a period of eighteen years with seven misdemeanors and that he did not use actual force against a person in any of his offenses. He asserts that the trial court placed too much emphasis on his criminal record and not enough emphasis on his military service. He also contends that the trial court failed to adequately explain why a sentence which exceeded the sentence range under the old sentencing guidelines for an offender with his criminal history was so "inappropriate" that it needed to be quadrupled.²

¶6 While we are not entirely unsympathetic to Crouthers' dissatisfaction with the lengthy sentence he received for what appears to have been an unremarkable hold-up, we are not persuaded that the points he raises are sufficient to overcome the presumption that the trial court's decision was reasonable. First, although it is true that all armed robberies will, by definition,

² Crouthers acknowledges that the guidelines are no longer effective, but notes simply for the sake of comparison that his sentence range would have been between sixty and seventy-eight months under score sheet 101.2 in the 1994 Wisconsin Sentencing Guidelines Manual.

involve the use or threat and use of a weapon, we see nothing to preclude the trial court from viewing all armed robberies as serious for that reason. That is, the trial court could properly compare the seriousness of the crime of conviction with other crimes. Furthermore, in comparison to other armed robberies, the trial court could reasonably consider the use of a gun to be more serious than the use of some other weapon. Thus, the trial court could properly comment that threatening the store clerk with a gun made Crouthers' offense a more serious matter.

¶7 With respect to the character of the offender, it was undisputed that Crouthers had a lengthy history of burglaries and thefts. While Crouthers does not feel it was fair to characterize his criminal history as an escalating pattern, he cannot deny that his most recent offense was his most serious one. Furthermore, the length of time over which the prior offenses were spread undermines the relevance of his prior service in the navy. Despite his military experience, Crouthers chose, time and again, to violate the law. His criminal activity could not be attributed merely to youth when it spanned the majority of his adult life. We cannot, therefore, conclude it was unreasonable for the trial court to place the weight it did on Crouthers' criminal record.

¶8 Finally, it is well established that the trial court is not bound by the sentence recommendation of the State. *State v. Williams*, 2000 WI 78, ¶16, 236 Wis. 2d 293, 613 N.W.2d 132. The weight to be given each of the primary factors is within the discretion of the sentencing court and the sentence may be based on any or all of the three primary factors after all relevant factors have been considered. *State v. Wickstrom*, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984). Although there are many sound reasons for the trial court to follow the sentence recommendations of the parties, particularly following a negotiated plea, the trial court may follow its own view of the sentencing factors. The mere fact

that the trial court's sentence exceeded, or even greatly exceeded, the State's recommendation does not make the sentence unreasonable.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

