

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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.

**Appeal Nos. 2015AP889-CR
2015AP890-CR
2015AP891-CR
2015AP892-CR**

**Cir. Ct. Nos. 2013CM229
2013CM231
2013CF168
2013CF169**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LINDSAY R. HOLSTROM,

DEFENDANT-APPELLANT.

APPEALS from a judgment and an order of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Lindsay Holstrom appeals a judgment of conviction and an order denying her motion for postconviction relief. Holstrom

argues her sentence was unduly harsh and excessive. She also argues her sentences should run concurrently. We affirm.

BACKGROUND

¶2 These four cases arise out of crimes associated with a spree of vehicle thefts. On March 6, 2013, Holstrom, then sixteen years old, was with an individual who had taken car keys and cash from a wallet in a Shawano residence. This person told Holstrom “she had a car.” Holstrom admittedly knew the vehicle was stolen, but she got into the vehicle and rode to Keshena, where the car was later located by police in a ditch. Footprints in the snow led police to Holstrom, who had been reported as a runaway.

¶3 On March 20, 2013, Holstrom again ran away from home and was seen at Walmart getting into a taxi-cab with James Brown, Holstrom’s biological mother’s boyfriend. The taxi company confirmed a girl matching Holstrom’s description was in the taxi, and she was dropped off at Brown’s residence, where police found her. A prior court order prohibited Holstrom from having contact with Brown. She was taken into custody, and marijuana was found in her pocket.

¶4 On May 12, 2013, police responded to a report of a stolen vehicle. Holstrom admitted stealing the vehicle and driving around Shawano before being arrested. She told the officers that she saw the keys in the vehicle in the early morning hours. She and another individual drove to a residence in Shawano, entered an unlocked door, and took liquor, marijuana, a marijuana pipe, and cash. She went to Walmart and stole various items and then drove to Keshena and drank the liquor and smoked the marijuana. Holstrom became intoxicated, and was also

an unskilled driver, so she began hitting curbs and damaged a tire on the vehicle to such an extent that she abandoned the vehicle in an alleyway.

¶5 Holstrom then noticed keys inside a second car that was parked in a driveway. She attempted to steal the vehicle but was admittedly “really drunk” at this point. She attempted to move the vehicle but struck the house. After hitting the house, Holstrom and her passenger took off running and they split up.

¶6 Holstrom then went to a residence and located a third automobile with the keys in it. She took the vehicle and drove around Shawano looking for her prior passenger. She then parked the vehicle in a parking lot at an apartment building and fell asleep due to her intoxication. She later saw police in the area, so she left the vehicle and walked around. The police stopped and talked to her, but they were unaware at that time she had stolen the vehicles. Holstrom then gained access to the building by pushing multiple buzzers, and hid in the building for a period of time. She again noticed officers near the vehicle, so she then walked to the skate park and stole a fourth vehicle with keys in it. She drove the vehicle to Keshena and then drove back to Shawano, where she ultimately was arrested. A search of Holstrom’s bag revealed items Holstrom had stolen from Walmart, including beauty products, clothing, jewelry, sandals, clothing accessories, and a Trac phone. She also admitted stealing items from the vehicles. Holstrom was taken to the Brown County Juvenile Detention Center.

¶7 After Holstrom’s release from detention on May 24, 2013, her parents again reported her as a runaway. Police found Holstrom at the Shawano Recreation Center with a cell phone, energy drink, and Listerine Mints, all of which she stole from a vehicle at the Recreation Center. Officers detected the

odor of intoxicants, and Holstrom admitted to drinking. She was in possession of a water bottle containing alcohol. She was again taken to the Brown County Juvenile Detention Center.

¶8 On June 17, 2013, Holstrom was waived into adult court upon the parties' stipulation. For the March 20 incident, the State charged Holstrom with possession of THC. For the May 12 incidents, the State charged her with three counts of operating a motor vehicle without the owner's consent, attempted operation of a motor vehicle without the owner's consent, misdemeanor theft, misdemeanor retail theft, and criminal damage to property. For the May 24 incident, the State charged her with misdemeanor theft.

¶9 On June 21, 2013, Holstrom stole another car. A red Chrysler Sebring was reported stolen from Shawano, and police observed the vehicle at 10:30 p.m. operating without lights. Police pulled alongside the vehicle and recognized Holstrom. As the officers activated their emergency lights and attempted to stop the vehicle, Holstrom sped away. During the ensuing chase, Holstrom struck the side of the officers' squad car, drove through a yard, hit a tree, drove over a stump, and hit a boat, causing it to strike a tree. Holstrom then exited the vehicle and fled on foot. Holstrom was on bond for her prior charges at the time. Her bond agreement included maintaining a curfew of 9:00 p.m. until 6:00 a.m., absolute sobriety, and not operating a motor vehicle. For this incident, the State charged Holstrom with operating a motor vehicle without the owner's consent, attempting to flee a traffic officer, obstructing an officer, second-degree recklessly endangering safety, and sixteen counts of bail jumping.

¶10 Holstrom agreed to plead no contest to possession of THC, misdemeanor theft, three counts of operating a motor vehicle without the owner’s consent, and attempted operating a motor vehicle without the owner’s consent. In addition, for the June 21 incident, Holstrom pled no contest to operating a motor vehicle without the owner’s consent, attempting to flee a traffic officer, second-degree recklessly endangering safety, and one count of bail jumping. The remaining charges were dismissed and read in.

¶11 Holstrom faced a maximum sentence of forty-seven years and nine months. The presentence investigation report recommended the circuit court withhold sentence and place Holstrom on probation. The State recommended a \$200 fine on the THC possession, and four years’ probation for the rest of the convictions. The defense joined that recommendation. The circuit court imposed a sentence consisting of thirty-three days’ jail on the THC conviction and ninety days’ jail consecutively on the misdemeanor theft. On the remaining counts, the court sentenced Holstrom to twelve years, nine months, and thirty-three days, of which six years was initial confinement. These sentences ran consecutively except the bail jumping charge which was concurrent. A postconviction motion arguing the sentence was unduly harsh and excessive was denied. Holstrom now appeals.¹

DISCUSSION

¶12 Holstrom argues her sentences are “disproportionate to the offenses,” which Holstrom claims can be “boiled down to joyriding, violations that should be addressed through probation” Holstrom emphasizes the parties’

¹ We note that Holstrom did not file a reply brief in this court.

joint sentencing recommendation, and that the PSI author also recommended probation.

¶13 We conclude the circuit court did not erroneously exercise its sentencing discretion.² The court considered proper sentencing factors, including Holstrom’s character, the seriousness of the offenses, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The objectives to be given greatest weight are up to the circuit court to identify in each case. *State v. Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197. Sentences well within the statutory maximums are presumptively neither unduly harsh nor excessive. *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

¶14 Initially, the circuit court noted it would generally place most teenagers on probation, but some cases are too severe. The court stated Holstrom’s crime spree was so intense that it had to make a summary sheet just to keep straight the cases and victims. The court reiterated on the record the seriousness of the offenses, and noted Holstrom stole four cars and attempted to steal a fifth. The court commented that, in its experience, “four vehicle thefts overnight I believe are unique ... I have never had as rapid a violation as I have had in this case.” The court also stated it was obvious “that people who were on the road around that time ... were at substantial risk.” The court stated, “Here we have an inexperienced driver that’s driving while intoxicated. There are few

² Holstrom uses the phrase “abuse of discretion.” In 1992, our supreme court changed the terminology used in reviewing a circuit court’s discretionary act from “abuse of discretion” to “erroneous exercise of discretion.” *See State v. Plymesser*, 172 Wis. 2d 583, 585 n.1, 493 N.W.2d 367 (1992).

things more dangerous in this country.” The court acknowledged Holstrom’s good character “until high school, and then she decided that intoxication, sex, and not following the rules were a better way to go. And there are consequences to that.”

¶15 The circuit court also considered the impact to the victims, and considered it aggravating that Holstrom committed crimes soon after being released from juvenile detention and while on electronic monitoring. The court stated: “She has broken promises to obey the law and follow bond conditions, even at a time period in which there were increased sanctions and restrictions on her. Every time she was released, she violated again.”

¶16 The circuit court did not find credible Holstrom’s claim that she was remorseful. It found Holstrom needed treatment for drug and alcohol addiction, as well as instruction on criminal thinking. The court also found protection of the public was “paramount” because of the number of victims involved.

¶17 The court also noted Holstrom continued to show an inability to follow rules in the county jail. She received several disciplinary tickets in jail, and three written warnings. On seven occasions, she received secure detention for violating jail rules, and she also got into a fight with another inmate. The court found “there is a trend here that is just as obvious as the nose on my face.”

¶18 Even after the circuit court dismissed multiple felony charges stemming from the plea agreement, Holstrom faced a maximum sentence of over forty-seven years. The court’s sentence of twelve years, nine months and thirty-three days is not the sort of sentence that is so excessive that it shocks the public sentiment and violates the judgment of reasonable people. *See Ocanas v. State*, 70

Wis. 2d 179, 185, 233 N.W.2d 457 (1975). As such, the court did not erroneously exercise its sentencing discretion.

¶19 Holstrom next argues her sentences should run concurrently “because the second sentence imposed is presumed concurrent to any prior sentence unless the judge declared otherwise.” See *State v. Oglesby*, 2006 WI App 95, ¶21, 292 Wis. 2d 716, 715 N.W.2d 727. Holstrom concedes the judge, when sentencing Holstrom on the first count of the first felony file, stated “[t]hey are all running consecutively unless I tell you differently.” However, Holstrom insists the court’s remarks were directed only to the four counts pertaining to the May 12 crimes. According to Holstrom, the court sentenced her in the second felony involving the June 21 crimes without stating the counts in that case were to run consecutive to the first felony case. We disagree.

¶20 The circuit court stated at the beginning of its oral pronouncement of sentencing for all of Holstrom’s felony convictions, “I am going with regard to all these, they are separate victims, separate events. I don’t care if it’s a spree. Every one of these victims was impacted. They are all running consecutively unless I tell you differently.” The court did not make another comment about consecutive or concurrent sentences until it reached the last conviction for bail jumping. There, the court stated: “And now the felony bail jumping I am running concurrently. And the reason why is a broken promise, but it’s essentially the same conduct as previously.”

¶21 We conclude the circuit court unambiguously intended each crime with a different victim to have a separate sentence served consecutively to the other sentences. The exception was Holstrom’s bail jumping, which the court

specifically indicated was “essentially the same conduct” and should therefore run concurrently. The judgment of conviction thus properly reflected the circuit court’s sentencing intent.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2013-14).

