

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2006

Cornelia G. Clark
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 No. 2004AP3387-CR

Cir. Ct. No. 1998CF342

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL D. GATTIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Michael D. Gattie appeals from a judgment sentencing him after revocation of his probation and an order denying his postconviction motion to modify that sentence. We conclude that the circuit court did not misuse its sentencing discretion, and we affirm.

¶2 In 1998, Gattie pled guilty to second-degree sexual assault of a child and third-degree sexual assault. The circuit court imposed twelve years of probation for the second-degree sexual assault and five years of prison for the third-degree sexual assault. Thereafter, Gattie’s probation was revoked, and the court sentenced Gattie to a fifteen-year term in prison consecutive to his sentence after parole revocation.¹ Thereafter, Gattie moved the court to modify the fifteen-year sentence because it was excessive. The circuit court denied the motion, and Gattie appeals.

¶3 On appeal, Gattie argues that the circuit court misused its sentencing discretion because it did not consider his accomplishments in treatment, his behavior on parole and probation, or the entire file. Gattie also claims that at the sentence modification hearing, the court made inappropriate remarks relating to anger management treatment, the “gifts of the Holy Ghost,” the decline of religion, and the court’s lack of faith in treatment programs.²

¶4 A court misuses its sentencing discretion when it imposes a sentence so excessive, unusual and 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.” *State v. Sarabia*, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984) (citation omitted). The weight to be given to each sentencing factor is within the circuit court’s discretion. *State v. Thompson*, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992).

¹ Gattie’s parole on the third-degree sexual assault was also revoked. The sentence imposed after parole revocation is not before this court.

² The sentencing court did not disparage the treatment Gattie received. Rather, the court focused on Gattie’s conduct.

¶5 When it originally sentenced Gattie after his probation was revoked, the circuit court noted Gattie's offenses and prior criminal conduct. The court found that Gattie had performed very poorly once released to parole and probation. During his period of release, Gattie absconded, removed his electronic monitoring device, and was convicted of a domestic violence offense in Michigan after he had completed a domestic violence program. The court found that Gattie acted in an intentional manner to frustrate the legal consequences of his felonious behavior by not meeting the conditions of his probation. The court rejected Gattie's explanations for his conduct and found that its original sentence was insufficient to motivate Gattie to improve his behavior. The court then imposed the fifteen-year sentence.

¶6 At the hearing on Gattie's sentence modification motion, Gattie argued that his fifteen-year sentence was excessive. The State countered that Gattie's offense, history of criminal conduct, and failure on parole and probation warranted the sentence imposed. The court reiterated that in imposing the fifteen-year sentence, it had considered the gravity of Gattie's offense and his abysmal record, including his criminal conduct and his conduct after release to probation. The court then made the remarks that Gattie challenges on appeal. The sentencing judge referred to his religious training where he "learned about the gifts of the Holy Ghost and the fruits of the Holy Spirit..." The judge noted that even those so educated sometimes do not live their lives according to those principles. The judge observed that although Gattie had participated in an anger management/domestic violence program, Gattie continued to engage in interpersonal violence. The court found that Gattie's fifteen-year sentence protected the public.

¶7 Our review of the sentencing and postconviction motion hearings reveals that the sentencing court placed great weight upon Gattie's failure on probation, including his continuing criminal conduct, and the need to protect the public. The court rejected Gattie's claim that he should receive favorable consideration for completing an anger management program and sex offender treatment because Gattie continued to commit acts of domestic violence. The court's overarching view was that Gattie remained a threat to public safety, requiring incarceration for a period longer than that originally imposed. These are all proper sentencing considerations. *Sarabia*, 118 Wis. 2d at 673 (sentencing factors discussed).

¶8 The judge's remarks about his religious training and treatment programs for offenders do not undermine the exercise of sentencing discretion. We understand these extraneous remarks in the context of Gattie's poor performance on probation, and while they may distract from the court's exercise of sentencing discretion, they do not detract from it. The court did not rely upon any improper factors in imposing a fifteen-year sentence after revocation of Gattie's probation.

By the Court.—Judgment and order affirmed.

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

