COURT OF APPEALS
DECISION
DATED AND FILED

January 24, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP3311-CR **Cir. Ct. No. 2003CF6745**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEROLD L. ROBER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed*.

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

¶1 PER CURIAM. Jerold L. Rober appeals from a judgment convicting him of one count of second-degree sexual assault by use or threat of

force or violence, in violation of WIS. STAT. § 940.225(2)(a) (2003-04).[1] He also appeals from an order of the circuit court denying his motion for sentence modification. Rober contends that the circuit court erroneously exercised discretion at sentencing when it allegedly failed to give him proper credit for entering a guilty plea in this case. Because we conclude that the circuit court's assignment of minimal weight to Rober's guilty plea during sentencing fell well within the scope of its sentencing discretion, we affirm the judgment and order.

¶2 Rober was charged with two counts of second-degree sexual assault of his wife. Rober admitted to the facts describing the incidents contained in the criminal complaint at his guilty plea hearing. The criminal complaint alleged that Rober had sexual intercourse with his wife without her consent and by use of force at her residence on October 31, 2003. On November 17, 2003, Rober's wife secured a restraining order against her husband. A few days later, Rober waited for his wife in the kitchen of her residence. As she entered her home, he threw a pillowcase over her head, tied her up, took the pillowcase off and again forcibly engaged in sexual intercourse without her consent.

¶3 Rober entered into a plea bargain with the State. In exchange for entering a guilty plea to the count related to the October 31, 2003 incident, the State agreed to move the circuit court to dismiss and read in the count related to the November 17, 2003 incident. The State also agreed to recommend a prison sentence of fifteen to sixteen years, composed of seven to eight years of initial confinement followed by eight years of extended supervision.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 The circuit court accepted Rober's guilty plea and granted the State's motion to dismiss and read in the count related to November 17, 2003. However, the circuit court imposed a twenty-two year sentence, consisting of twelve years of initial confinement followed by ten years of extended supervision. Rober's subsequent motion for sentence modification was denied[2] and this appeal followed.

¶5 Sentencing lies within the discretion of the circuit court and our review is limited to determining whether the circuit court properly exercised discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Although the circuit court is presumed to have acted reasonably, ***id.***, ¶18, the circuit court must articulate the basis of the sentence on the record, ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). The primary factors to be considered are the gravity of the offense, the character of the offender, and the need to protect the public. ***Id.*** at 275-76. Further:

> A court may exceed its discretion when it places too much weight on any one factor … or when the sentence is so excessive as to "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." However, the weight to be accorded particular factors in sentencing is for the trial court … to determine …. And where the challenge is that the sentence is excessive, the defendant bears the burden of establishing that it is unjustified or unreasonable.

State v. Johnson, 178 Wis. 2d 42, 53, 503 N.W.2d 575 (Ct. App. 1993) (citations omitted).

[2] The circuit court's order denying Rober's request for sentence modification misstates the victim's age. In every other respect, the order is factually accurate. The victim's age played no part in the circuit court's fashioning of the sentence and denial of the motion. We conclude, therefore, that the error is *de minimis*.

¶6 Rober contends on appeal that the circuit court erroneously exercised discretion at sentencing because the court failed to give Rober adequate credit for entering a guilty plea. We disagree. While the entry of a guilty plea may be a mitigating factor at sentencing, *see* ***Jung v. State***, 32 Wis. 2d 541, 550, 145 N.W.2d 684 (1966), there is no case law holding that a guilty plea must be treated as a mitigating factor or that it is entitled to any particular weight. Like any relevant factor, the weight to be assigned to an admission of guilt by the defendant is within the sentencing court's discretion. ***State v. Curbello-Rodriquez***, 119 Wis. 2d 414, 434, 351 N.W.2d 758 (Ct. App. 1984).

¶7 In this case, the circuit court examined at length the seriousness of the crime and Rober's personal history and demeanor. The circuit court catalogued evidence of Rober's immaturity, violent temper and dishonesty. The court also found that Rober lied to the court during the sentencing hearing about the theft of his wife's engagement ring and wedding band. In light of the circuit court's negative assessment of Rober's credibility and the lack of sincerity of his claims of remorse, it assigned scant weight to Rober's guilty plea. We conclude that the record demonstrates that the circuit court properly examined the facts, considered the relevant sentencing factors, and set forth its reasoning. It follows that the circuit court did not erroneously exercise discretion at Rober's sentencing.

By the Court.—Judgment and order affirmed.

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