COURT OF APPEALS
DECISION
DATED AND FILED

February 28, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1303-CR **Cir. Ct. No. 2000CF5724**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAWRENCE E. GREEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEAN W. DIMOTTO, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lawrence E. Green appeals from a corrected judgment of conviction for burglary, and from a postconviction order denying his motion for sentence modification or resentencing (collectively referred to as "sentence modification"). The issue is whether the trial court erroneously

exercised its sentencing discretion by failing to explain its reasons for imposing the precise sentence it did, and by failing to explain how that sentence was the minimum amount of custody necessary to achieve the sentencing considerations ("minimum custody standard"). We conclude that the trial court's application of the primary sentencing factors, its reasons for rejecting probation as a sentencing option, and its explanation of the appropriateness of a prison sentence constituted a proper exercise of sentencing discretion. Therefore, we affirm.

¶2 Green was charged with two burglaries allegedly committed within weeks of one another. The trial court denied Green's motion to suppress the allegedly stolen property found in his possession. Green was later apprehended on a bench warrant issued for his failure to appear at a court proceeding. Green was repeatedly diagnosed as not competent to stand trial, but competent when he allegedly committed these burglaries. Green's competency was finally restored through treatment over two years after these burglaries occurred.

¶3 Ultimately, Green agreed to plead guilty to one of the charged burglaries, contrary to WIS. STAT. § 943.10(1)(a) (1999-2000), in exchange for the dismissal but reading-in of the second charged burglary, and a sentencing recommendation of a prison term of unspecified duration. The presentence investigator recommended a sentence in the range of seven to eleven years, comprised of a range of four to six years in confinement, and three to five years in extended supervision. The trial court imposed a ten-year sentence to run consecutive to any other sentence, comprised of seven and one-half years in confinement, and two and one-half years of extended supervision. Green moved for sentence modification, claiming that the trial court erroneously exercised its discretion by failing to explain the reasons for the length of its sentence, and by

failing to explain how that sentence met the minimum custody standard. The trial court denied the motion.

¶4 Green appeals, contending that the trial court erroneously exercised its discretion by failing to explain its reasons for imposing the precise sentence it did, and how that sentence met the minimum custody standard. In challenging the trial court's exercise of discretion, Green relies extensively on ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971) and ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. We do not apply ***Gallion*** to sentences imposed before it was decided. *See* ***State v. Trigueros***, 2005 WI App 112, ¶4, n.1, 282 Wis. 2d 445, 701 N.W.2d 54.

> When a criminal defendant challenges the sentence imposed by the [trial] court, the defendant has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue. When reviewing a sentence imposed by the [trial] court, we start with the presumption that the [trial] court acted reasonably. We will not interfere with the [trial] court's sentencing decision unless the [trial] court erroneously exercised its discretion.

State v. Lechner, 217 Wis. 2d 392, 418-19, 576 N.W.2d 912 (1998) (citations and footnote omitted). The primary sentencing factors are the gravity of the offense, the character of the offender, and the need for public protection. ***State v. Larsen***, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The trial court's obligation is to consider the primary sentencing factors, and to exercise its discretion in imposing a reasoned and reasonable sentence. *See* ***id.*** at 426-28.

¶5 The trial court considered the gravity of the offense, explaining that "[t]hese burglaries [including the read-in offense] are extremely serious crimes," further characterizing them as "very bad." The trial court explained that a home invasion affects the victim with a "lingering, continuing devastating lack of

security within [his or her] own home, which is supposed to be your castle, your refuge, your place of safety and security away from the outside world, your place of peace, your safe haven, your port in the storm of life." It further explained that the burglary's effects on the victims have worsened after two years, rather than improved.

¶6 The trial court was not unsympathetic when it considered Green's character. It was

> not without compassion for that kind of suffering for an underlying psychosis that caused [Green] to be hospitalized for quite a length of time in Winnebago and the pain that is the reality of hallucinations….But [Green has] chosen so very unfortunately, so regrettably…to use illegal substances to replace the prescribed ones with or in addition to the prescribed ones. And if [Green] think[s] [he] w[as] crazy in [his] behavior before, it's nothing compared to what [he is] when [he] do[es] cocaine.

The trial court was troubled by Green's "very, very long history of dishonest behavior and then, as an adult, drug behavior." It concluded its comments about Green's character by telling him:

> Your record counts against you in every respect. You were unreliable. Even while this case was pending you bench warranted twice, even with cash bail and mental health resources directed your way and available to you while this case was pending. So it's clear to [the trial court] that [it] can't put you on probation. There is no way [the trial court] can do that. [The trial court] can't trust you. [The trial court] can't trust you. [The trial court] know[s] that proper drugs help you quite a bit. [The trial court] can't trust you to stay on those. It seems to [the trial court] that there is a profound need to protect this community from further victimization by you.

> You had two knives on you when you committed the crimes strung out on cocaine, stealing what people worked hard for. They worked for these things. Worked for them. And you took them. You decorated yourself with all their jewelry as you carried out bagfuls of stuff from each of these homes.

¶7 These remarks also address the third sentencing factor, community protection. The trial court was obviously troubled by Green's character and his drug problems, exacerbating his mental health problems, which were further aggravated by his inability to remain on his prescribed medication to alleviate his mental condition. Green's combination of problems, some of which were self-induced, rendered him a serious risk to the community, and warranted imprisonment.

¶8 The trial court considered the primary sentencing factors and provided its reasoning for imposing the sentence it did. The fact that it exercised its sentencing discretion differently than Green had expected, does not constitute an erroneous exercise. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) (our inquiry is whether discretion was exercised, not whether it could have been exercised differently).

¶9 Green's related challenge is that the trial court failed to explain how its sentence met the minimum custody standard. As evidenced in the previous quotation from its sentencing remarks, the trial court explained why it rejected probation as a sentencing option. Although it did not provide the precise reason why its seven-and-one-half-year prison term, followed by a two-and-one-half-year period of extended supervision, met the minimum custody standard, it was not required to specify its reasons with the precision Green suggests. Its concerns about Green's mental health problems, his inability to remain on his medication, and his repeated relapses into drug use and criminal conduct sufficiently

demonstrate the trial court's consideration of the minimum custody standard incident to its exercise of sentencing discretion. *See* ***State v. Ramuta***, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 ("no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion").

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).