

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 21, 2000

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. 00-1960-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM W. BAIR,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
BONNIE L. GORDON, Judge. *Affirmed.*

¶1 FINE, J. William W. Bair appeals, *pro se*, from the trial court's order denying him work-release privileges in connection with his incarceration at the Milwaukee House of Correction. We affirm.

I.

¶2 Bair was originally charged with one count of misdemeanor retail theft, as party to a crime, *see* WIS. STAT. §§ 943.50(1m), (4)(a) & 939.05, and one count of felony theft, also as party to a crime, *see* WIS. STAT. §§ 943.20(1)(a), (3)(b) & 939.05. His co-defendant in both counts was Melissa K. Gronewold. For reasons not apparent on the limited appellate record, the misdemeanor retail theft count was dismissed, the felony count against Bair was amended to misdemeanor status, and Bair pled guilty to that newly crafted misdemeanor count. The trial court sentenced Bair to a stayed none-month period of incarceration at the Milwaukee House of Correction, and placed Bair on probation for two years.

¶3 Bair's probation was revoked, and he sought work release privileges. As noted, the trial court denied his request. The trial court gave its reason in a brief written order: "Under circumstances where probation has been revoked, the court does not find release privileges to be appropriate. The defendant was given the opportunity to conform his conduct and he failed to do so." The appellate record does not reveal why Bair's probation was revoked.

¶4 In his handwritten brief on appeal, Bair raises three arguments as to why he believes that the trial court erred in denying his request for work-release privileges: his co-defendant, Gronewold, received a lesser sentence and was given work-release privileges; he was doing well in the House of Correction, where, according to his brief, he has "almost" received his G.E.D degree; and that he needs to support members of his family, who have become, in his phrase, "homeless."

II.

¶5 The decision whether to grant to an eligible prisoner work-release privileges is part of the trial court's sentencing responsibility. An appellate court does not write on a clear slate when reviewing a trial court's imposition of sentence. Rather, sentencing is vested in the trial court's discretion, and a defendant who challenges a sentence has the burden to show that it was unreasonable; it is presumed that the trial court acted reasonably. *State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912, 925 (1998). The primary factors to be considered in imposing sentence are the gravity of the offense, the character of the offender, and the need for the public's protection. *Elias v. State*, 93 Wis. 2d 278, 284, 286 N.W.2d 559, 561 (1980). If the trial court exercises its discretion based on the appropriate factors, its sentence will not be reversed unless it is "so excessive and unusual and so 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." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975). Leniency shown to a co-defendant does not make a defendant's sentence improper. See *State v. Perez*, 170 Wis. 2d 130, 144, 487 N.W.2d 630, 635 (Ct. App. 1992) (defendant must show "that the disparity in sentences was arbitrary or based upon considerations not pertinent to proper sentencing"). Moreover, although a jail prisoner may petition the court for work-release privileges at any time, and post-judgment behavior is a factor that the court can consider in deciding whether to award those privileges, see *State v. Kluck*, 210 Wis. 2d 1, 9, 563 N.W.2d 468, 471–472 (1997), Bair has not demonstrated how the trial court here erroneously exercised its discretion. Bair has also not shown how the trial court erroneously exercised its discretion in determining that whatever he did to trigger the revocation of his

probation outweighed other considerations that might have warranted the grant of work-release privileges.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

