

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 03, 2007

A. John Voelker
Acting 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. 2006AP1142-CR

Cir. Ct. No. 2004CF5757

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD A. PERKINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Ronald A. Perkins pled guilty to felony murder, party to a crime. See WIS. STAT. §§ 940.03 and 939.05 (2003-04). The trial court sentenced Perkins to twenty-six years of imprisonment, comprised of eighteen years of initial confinement and eight years of extended supervision. The only

issue on appeal is whether the trial court properly exercised its sentencing discretion. We conclude that the trial court did so, and accordingly, we affirm.

Background

¶2 The criminal complaint alleged the following facts. Perkins and a co-defendant, Equanes A. Griffin, planned to rob persons in an apartment building from which they believed marijuana was being sold. While inside the building, they encountered Alex Smith in the second-floor hallway. After a short conversation during which Smith asked Perkins and Griffin who they were visiting, Smith started backing up towards an apartment door. Perkins told police that Smith was holding a plastic bag in his left hand and had his right hand in his pants. When Smith appeared to “flinch,” Perkins “got scared” and took a pistol from his waistband. Perkins “closed his eyes ... raised the pistol” in Smith’s direction and “fired the pistol once.” Smith was gone when Perkins opened his eyes. Perkins told police that he heard an apartment door shut and lock. Perkins and Griffin then fled. Perkins told police that he did not know that he had shot Smith until he heard a news report about the incident that stated that the victim had died. Smith collapsed and died inside his brother’s apartment. Police found two plastic bags of marijuana under his body.

Discussion

¶3 On appeal, Perkins contends that the trial court misused its discretion because it “failed to consider any of the mitigating circumstances” and because the length of initial confinement “far extends [sic] that which was necessary.” Perkins stresses his minimal prior criminal record, his remorse, cooperation and acceptance of responsibility by pleading guilty, and his positive family background. He also points out that he only fired one shot and that Smith was

“participating in criminal activity” which “should have been considered to mitigate” the length of initial confinement. Perkins concedes that the crime was “extremely serious,” but argues that his conduct “was not sufficiently aggravated” to warrant eighteen years of initial confinement. He also faults the trial court for placing “an extreme and undue amount of consideration on the gravity and severity of the offense and the loss of a life.”

¶4 Appellate review of sentencing is limited to determining if discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. “When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion.” *Id.* When the exercise of discretion has been demonstrated, we follow “a consistent and strong policy against interference with the discretion of the trial court in passing sentence.” *Id.*, ¶18 (citation omitted). “[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.” *Id.* (citation omitted). The “sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *Id.*, ¶23 (citation omitted).

¶5 “Circuit courts are required to specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, ¶40. Also, under truth-in-sentencing, the legislature has mandated that the court shall consider the protection of the public, the gravity of the offense, the rehabilitative needs of the defendant and other aggravating or mitigating factors. *Id.*, ¶40 n.10.

¶6 In its sentencing comments, the trial court considered the nature of the crime. The trial court stated that any case that “involve[s] the loss of life [is] tremendously difficult” for the victim’s family and the defendant’s family. The trial court stated that it also “stop[s] ... to remember the person who ... [has] lost his life, [and] who will never see another day.” The trial court described Perkins’s crime as “profoundly grave,” “senseless[]” and “particularly hard” because Smith was “young” and would “never get[] really to live life in the ordinary way, to enjoy all of the simple pleasures of life, the spring, the summer, the aggravation that comes with so much of human life, the opportunity to bring children into the world.” The trial court stated that Smith was killed “for no good reason ... other than [Perkins] ... put[ting] himself in a very dangerous situation ... which he was incapable of handling.”

¶7 The trial court considered the need to protect the community. The trial court discussed the impact of guns in the community and stated that it had an “obligation ... to make sure that everyone understands that when a person picks up a gun and the unthinkable happens, there will be a very high price to be paid.” The trial court also stated that “[t]he loss of young men’s lives in our community has become so common” that some deaths are not reported in the newspaper.

¶8 The trial court considered Perkins’s character. The trial court addressed the comments made by the two persons who spoke on Perkins’s behalf at sentencing. The trial court considered Perkins’s role in the crime, noting that he, and not Griffin, shot Smith. The trial court noted that Perkins’s criminal record was not as serious as Griffin’s record. The trial court acknowledged that Griffin may have been “manipulative,” but stated that “manipulators can’t get anywhere if other people don’t let them, and Mr. Perkins let him.” The trial court concluded that the relative culpabilities of Perkins and Griffin were “roughly

equal,” and accordingly, imposed the same sentence on Perkins that it had previously imposed on Griffin.

¶9 The record shows that the trial court identified the various factors that it considered. Those factors were appropriate and relevant. The trial court also identified the primary objectives of the sentence—the protection of the community, punishment and deterrence. The trial court’s emphasis on the severity of the crime and the loss of life was not error. Contrary to Perkins’s appellate argument, the trial court considered mitigating factors, particularly, the lack of a serious criminal record. While Perkins may disagree with the relative weight assigned to the various factors, “[t]he weight to be given each factor is within the discretion of the [circuit] court.” *State v. Wickstrom*, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984). The trial court did not erroneously exercise sentencing discretion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

