

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 17, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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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. 00-2171-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RAYMOND T. BRADLEY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. Raymond Bradley appeals his judgment of conviction for felony theft from a vulnerable adult, contrary to WIS. STAT. §§ 943.20(1)(a) and (3)(d)6, and habitual criminality, contrary to WIS. STAT.

§ 939.62(1)(b).<sup>1</sup> He also appeals an order denying him postconviction relief. He argues that the trial court erroneously exercised its discretion when it sentenced him to six years in prison without explaining why it chose that term and that six years is excessive. We disagree and affirm.

## BACKGROUND

¶2 Bradley pled no contest to theft from a vulnerable adult, Lester Lawrence. The criminal complaint alleged that Lester's doctor certified him as having an incapacity under WIS. STAT. §155.01(8). Lester is so unable to receive and evaluate information effectively or communicate decisions that he lacks the capacity to manage his health care decisions. A caretaker reported to Lester's son, Steven Lawrence, that she found \$60 in Lester's pants pocket. Steven reported to the police that Lester told him a man gave the money to him, but that Lester did not remember anything more about the incident. Steven noticed that an antique table and an antique stoneware water cooler were missing from the basement. Steven valued the items, including others that Bradley admitted taking, at \$2,000.

¶3 Bradley acknowledged to police that he had visited Lester and reported that Lester agreed to sell him the items for \$160. He admitted that he looked unescorted through the house, including the basement, for antiques. He also admitted "purchasing" some other items. Bradley stated that he worked in the antique business and he resold the items. Bradley admitted that Lester seemed as if he was on medication and that he only communicated by nods, winks, and pointing.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version.

¶4 In exchange for pleading no contest, the prosecutor recommended four years' probation and withholding a one-year jail sentence with good time credit, with the conditions that Bradley pay restitution and be prohibited from selling antiques. Bradley acknowledged that the judge was not bound to follow the plea agreement and could sentence him to the maximum penalty. The presentence report recommended a state prison term. The trial court sentenced Bradley to six years in prison, ordered restitution and prohibited him from engaging in resale activity during his supervision.

### DISCUSSION

¶5 While Bradley recognizes that the court considered the required sentencing criteria of protecting the public, punishing him and deterring others, he argues that the court did not adequately detail the reasons for the particular sentence imposed as required by *McCleary v. State*, 49 Wis. 2d 263, 273, 182 N.W.2d 512 (1971). He also contends that the sentence is excessive and does not impose the minimum confinement necessary to achieve the sentencing goals, citing *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). He argues that the court omitted mitigating factors and overstated Bradley's criminal record and the seriousness of the offense.

¶6 Our standard of review is whether the trial court erroneously exercised its discretion. *Id.* at 336. We begin with the presumption that the trial court acted reasonably. *Id.* The defendant must demonstrate an unreasonable or unjustifiable basis in the record for the sentence. *Id.* We will affirm a discretionary decision if the court in fact exercises discretion and the decision is based on the facts in the record and a "logical rationale founded upon proper legal

standards." *McCleary*, 49 Wis. 2d at 277. Strong public policy considerations support deference to the trial court's sentencing determination. *Id.* at 276.

¶7 A sentencing court is required to impose "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." *Krueger*, 119 Wis. 2d at 336. The court may consider the defendant's history of criminal offenses including pending charges, the defendant's personality, character and social traits, his truthfulness, remorse, repentance and cooperativeness, and need for close rehabilitative control, and the rights of the public. *Id.* at 337. An erroneous exercise of discretion may be demonstrated "if the trial court failed to state on the record the material factors which influenced its decision, gave too much weight to one factor in the face of other contravening considerations, or relied on irrelevant or immaterial factors." *Id.* at 337-38. The court has particular discretion to weigh the factors. *Id.* The court has discretion to determine the sentence length within the permissible statutory range. *Hanson v. State*, 48 Wis. 2d 203, 207, 179 N.W.2d 909 (1970). We will, however, reverse a sentence that "shock[s] public sentiment and violate[s] 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 (1975).

¶8 A "no contest" plea admits all matters alleged in the complaint including allegations of prior convictions.<sup>2</sup> *State v. Rachwal*, 159 Wis. 2d 494, 506, 465 N.W.2d 490 (1991). If the court disagrees with the joint plea agreement recommendation, it is not manifest injustice to sentence a defendant to a more

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<sup>2</sup> Although contested at the postconviction motion, Bradley does not challenge the voluntariness, knowledge or intelligence of his no contest plea on appeal.

stringent penalty. *State v. Williams*, 2000 WI 78, ¶2, 236 Wis. 2d 293, 613 N.W.2d 132. However, the defendant must be aware that the court has the authority to sentence the maximum penalty. *Id.* The trial court may follow the presentence report recommendation. *State v. Hilleshiem*, 172 Wis. 2d 1, 23, 492 N.W.2d 381 (Ct. App. 1992).

¶9 Bradley focuses on the prosecution's comment that absent enhancers, a person who stole \$2,000 would likely not go to prison or jail. However, Bradley concedes that even without enhancers, a \$2,000 theft could be punished with up to a \$10,000 fine and two years' imprisonment. *See* WIS. STAT. §§ 943.20(3)(b) and 939.50(3)(e). His conviction was enhanced in two ways. Theft from a vulnerable adult increases the potential imprisonment to five years. *See* WIS. STAT. §§ 943.20(3)(d)6 and 939.50(3)(d). Further, because Bradley is a repeat offender,<sup>3</sup> he is subject to an additional six years' imprisonment under the habitual criminality statute. *See* WIS. STAT. § 939.62(1)(b). Six years in prison was within the maximum eleven-year sentence.

¶10 At sentencing, as required, the trial court permitted the district attorney, Bradley's attorney, and Bradley to present statements. *See* WIS. STAT. § 972.14(2). The court also allowed the victim's son and Bradley's sister to make statements. *See* WIS. STAT. § 972.14(3)(a). The court acknowledged Bradley's offered apology, restitution and promise to pursue a different occupation. The court considered Bradley's conviction history, noting thirteen prior offenses since age eighteen, including defrauding an innkeeper and battery. It explained that the offense was grave because elderly people who need others to care for them are as

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<sup>3</sup> Bradley was convicted of third-degree sexual assault within five years of committing the current offense.

vulnerable as infants. The court stated that this theft was enhanced because Lester was incapacitated and because of the way Bradley took liberties with the family home and antiques. The court found Bradley's apologies and promises to stop soliciting antiques in this manner inconsistent with his behavior subsequent to the charged offense.<sup>4</sup> The court interpreted Bradley's acts as part of a pattern of conduct. The court acknowledged Bradley's rehabilitative needs, but explained that punishment was necessary to deter others from conducting themselves similarly.

¶11 Converting the relevant circumstances into an appropriate term of incarceration is the very essence of sentencing discretion. The law never has, nor does Bradley explain how it could convert sentencing factors into a precise prison term. We conclude that the trial court sufficiently detailed its sentencing reasoning. Further, based on the facts, six years is not excessive. The record does not show that the trial court gave too much weight to one factor in the face of other contravening considerations or that it relied on irrelevant or immaterial factors. Finally, the sentence is not so excessive or unreasonable as to shock public sentiment. *See Ocanas*, 70 Wis. 2d at 185. We conclude that the trial court did not erroneously exercise its discretion.

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<sup>4</sup> Six months after committing the charged offense, Bradley entered another elderly person's home and searched the home, uninvited and unescorted, for antiques. Bradley does not deny this incident.

*By the Court.*—Judgment and order affirmed.

Not recommended for publication in the official reports.

