COURT OF APPEALS
DECISION
DATED AND FILED

June 19, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2891-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JON A. JENSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Polk County: ROBERT H. RASMUSSEN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jon Jensen appeals a judgment sentencing him to ten years in prison for burglary and an order denying his motion to reduce the sentence. He argues that the trial court did not adequately explain its reasons for

imposing the maximum sentence and that the sentence is unduly harsh. We reject these arguments and affirm the judgment and order.

¶2 A jury convicted Jensen of burglary to a residence. The evidence shows that the homeowners suffered over $42,000 of uninsured loss. The defense and the presentence report suggested probation to facilitate restitution. The prosecutor begrudgingly joined in the recommendation. The trial court rejected that recommendation and imposed the maximum ten-year prison term.

¶3 Sentencing is committed to the trial court's discretion, and there is a strong public policy against interference with its sentencing discretion. *See* ***State v. Echols***, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). A court properly exercises discretion when it considers the facts of record and reasons its way to a rational, legally sound conclusion. ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). If the trial court fails to give appropriate reasons, this court is obliged to search the record to determine whether the discretionary decision can be sustained. ***Id.*** at 282.

¶4 The trial court adequately explained its reasons for imposing the maximum sentence. It specifically considered the seriousness of the offense, Jensen's character and the need to protect the public. *See* ***State v. Thompson***, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992). The value of the property stolen was nearly seventeen times that needed to constitute a class C felony under Wisconsin theft statutes. Because Jensen was not taken into custody for almost four years after the burglary, the victims were unable to recover any of the stolen items. Jensen's ability to pay restitution was highly questionable because, by his own admission, he had not held a job for the previous sixteen years. The court properly considered the "tremendous impact … upon the victim's economic

standing." *See* ***State v. Santana***, 220 Wis. 2d 674, 681, 584 N.W.2d 151 (Ct. App. 1998).

¶5 Jensen argues that the maximum sentence should be reserved for the most serious cases. He notes that the crime involved no violence. But, had it involved violence, the description of the crime would have been different and the maximum sentences enhanced. The trial court reasonably viewed this burglary as a very serious offense because of the value of the property stolen and its impact on the victims.

¶6 The maximum sentence is also justified by the trial court's assessment of Jensen's character. At the time of the burglary, he was thirty-two years old, had a substantial juvenile record and two adult convictions. He had previously been sentenced to a four-year prison term for burglary. The court also found that Jensen lied during the course of the trial and showed no remorse, factors that justify the sentence imposed. *See* ***State v. Tew***, 54 Wis. 2d 361, 367-68, 195 N.W.2d 615 (1972).

¶7 Jensen contends that the trial court should have been impressed by the fact that he had been crime free for over a decade at the time he was sentenced. Assessment of a defendant's character is a matter for the sentencing court to consider because it has great advantage in considering the defendant's demeanor. *See* ***State v. Spears***, 147 Wis. 2d 429, 446, 433 N.W.2d 595 (Ct. App. 1988). A ten-year hiatus in committing major felonies, part of which time included a prison sentence and a serious accident involving loss of a limb, is hardly exemplary. Jensen also notes that the prosecutor acknowledged that other people had positive things to say about Jensen's abilities and "what could be his contribution to the community if he chose to do so." The prosecutor's concession that Jensen had the

ability to contribute to the community if he chose to do so is hardly a character endorsement.

¶8 Finally, the ten-year sentence is not so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Jensen was not rehabilitated or deterred by his previous four-year sentence. Jensen suggests that the sentence recommended by the parties and the presentence report could be used to determine the reasonableness of the sentence. The trial court is not bound by those recommendations. *See* ***State v. Johnson***, 158 Wis. 2d 458, 469, 463 N.W.2d 352 (Ct. App. 1990). It appears that the prospect of restitution to the victim controlled those recommendations. The trial court's doubt that Jensen could make significant restitution constitutes reasonable grounds for departing from the recommended sentence. Imposing the maximum sentence for an unrepentent repeat offender would not shock public sentiment.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).