

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 16, 2001

Cornelia G. Clark
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.

No. 01-1714-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARTIN T. BAUKNECHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Barron County: JAMES C. EATON, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Martin Bauknecht appeals from his twelve-year sentence and denial of his motion for postconviction relief on four counts of issuing worthless checks, contrary to WIS. STAT. § 943.24(1), as a habitual

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version.

criminal. *See* WIS. STAT. § 939.62(1)(a). The single issue on appeal is Bauknecht's challenge to the circuit court's exercise of sentencing discretion. Bauknecht contends that the sentence is harsh, excessive and disproportionate to the offense committed. This court rejects his challenge and affirms the sentence.

¶2 The circuit court sentenced Bauknecht on four convictions of issuing worthless checks totaling slightly less than \$100. Because Bauknecht is a habitual offender as defined by WIS. STAT. § 939.62(2), the maximum incarceration for each conviction was increased from nine months to three years. The circuit court sentenced Bauknecht to three years in prison on each conviction, to run consecutively. Conceding that the court properly sentenced him to prison, Bauknecht challenges the length of the sentence as unduly harsh.

STANDARD OF REVIEW

¶3 A defendant who claims a sentence is excessive has a heavy burden under the present law. He must show an unreasonable or unjustifiable basis for it in the record. *See Elias v. State*, 93 Wis. 2d 278, 281-82, 286 N.W.2d 559 (1980). A strong policy exists against interference with the trial court's sentencing discretion. *State v. Killory*, 73 Wis. 2d 400, 408, 243 N.W.2d 475 (1976).

¶4 Appellate review is limited to a two-step inquiry. This court first determines whether the trial court properly exercised its discretion in imposing the sentence. *State v. Glotz*, 122 Wis. 2d 519, 524, 362 N.W.2d 179 (Ct. App. 1984). If so, this court then considers whether that discretion was unreasonably exercised by the imposition of an excessive sentence. *Id.* The primary factors on which a sentencing decision should be based are the gravity of the offense, the character of the offender and the need to protect the public. *Id.* Finally, a circuit court improperly exercises its sentencing discretion when the sentence is 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 (1975).

SENTENCE

¶5 At first blush, it might appear that imposing the maximum sentence on each conviction was harsh. However, the circuit court explained that it was imposing the maximum sentence on each conviction because of Bauknecht's extensive and chronic record, personal threats against his probation agent, refusal to rehabilitate or reform his conduct, disrespect for other people and their property and the strong need for a lengthy incarceration. Bauknecht's criminal record dates from 1983 to the present with repeated convictions for resisting an officer, issuing worthless checks, disorderly conduct, battery and criminal trespass to a dwelling.

¶6 Importantly, Bauknecht failed to successfully complete a single term of probation throughout these years. Even sentencing him previously as a repeat offender failed to stop his criminal behavior. When recognizing the obvious need for incarceration, the court observed that unless Bauknecht was incarcerated, the public would not be protected from his inevitable continued criminal offenses. As the State emphasizes, the trial court aptly described Bauknecht as incorrigible and likely to reoffend unless incarcerated for a lengthy period.

¶7 Here, the circuit court properly placed great weight on Bauknecht's incorrigible character as demonstrated through his chronic and extensive criminal behavior and the strong need for the public's protection. These are proper factors on which to base a sentencing decision, and the circuit court reasonably exercised its sentencing discretion. Under these circumstances, this court cannot say that the sentences were excessive and unusual and so disproportionate to the offenses

committed as to shock public sentiment or violate the judgment of reasonable people concerning what is right and proper. Accordingly, the judgment of conviction and order denying postconviction relief are affirmed.

By the Court.—Judgment and order affirmed.

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

