

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 2012

Diane M. Fremgen
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. 2012AP352-CR

Cir. Ct. No. 2010CF5905

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS LEE HARRIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Thomas Lee Harris appeals from a judgment of conviction, entered upon his guilty pleas, on one count of robbery, one count of armed robbery, and one count of attempted robbery, all with the use or threat of force. Harris also appeals from an order denying his postconviction motion for

sentence modification. Harris complains that the sentencing court failed to address his character or the need to protect the public. We reject this argument and affirm the judgment and order.

¶2 Harris was originally charged with two counts of robbery, two counts of armed robbery, and one count of attempted robbery, all with the threat or use of force, plus a sixth charge of attempting to flee or elude a traffic officer. Harris ultimately pled guilty to the two armed robberies, one of which was amended to simple robbery, and the attempted robbery. The remaining two robbery charges were dismissed, and the fleeing charge was dismissed and read in for sentencing. On August 11, 2011, the circuit court sentenced Harris to twenty years' imprisonment—ten years' initial confinement and ten years' extended supervision—for the armed robbery, plus concurrent terms of fifteen years' imprisonment for the robbery and three and one-half years' imprisonment for the attempted robbery.

¶3 On January 24, 2012, Harris filed a postconviction motion to modify his sentence.¹ As noted, he claimed that the circuit court failed to address or consider his character and the need to protect the public when determining his sentence. The circuit court denied the motion, explaining it had considered Harris's character "extensively with regard to his drug use, criminal history, and rehabilitative needs." The circuit court also noted that it had discussed the need for punishment and deterrence. Harris appeals.

¹ Harris had also moved to dismiss the attempted armed robbery, claiming a failure to establish probable cause on that count at the preliminary hearing. The circuit court rejected this argument as "patently frivolous," and Harris does not re-raise it on appeal.

¶4 Sentencing is committed to the circuit court’s discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A defendant challenging a sentence has a burden to show an unreasonable or unjustifiable basis in the record for the sentence at issue. *See State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998). We start with a presumption that the circuit court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See id.* at 418-19.

¶5 In its exercise of discretion, the circuit court is to identify the objectives of its sentence, including but not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. *Gallion*, 270 Wis. 2d 535, ¶40. In determining the sentence objectives, we expect the circuit court to consider a variety of factors, including as primary factors the gravity of the offense, the character of the defendant, and the need to protect the public. *See State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 Wis. 2d 409.

¶6 On appeal, Harris does not identify any unreasonable or unjustifiable basis for his sentence. Rather, he reiterates his general complaint that the circuit court failed to address his character and the need for protection of the public, which led to him being “incorrectly sentenced.” However, our review of the record satisfies us that the circuit court properly exercised its sentencing discretion.

¶7 The circuit court observed that Harris had been serving a sentence on work release, saved \$6000, then blew it on cocaine when he got out of prison. When he ran out of money, he started robbing people to get more money for cocaine. Based on his record, the circuit court commented that Harris had “a consistent pattern of doing well in prison, getting out, getting revoked or getting

arrested for being an absconder and going back to prison.” The circuit court noted that each time Harris is released from prison, he “turn[s] to cocaine immediately and threaten[s] the community.” Thus, the circuit court further commented that “there’s only so much we can do on extended supervision. That’s why people get sent to prison and get locked up. Keep them off the street. And I think this is ... the main purpose in this case.”

¶8 It is quite clear that the circuit court considered Harris’s character and the need to protect the public, going so far as to identify protection of the community as “the main purpose in this case.” Harris may have preferred it had the circuit court expressly identified how each comment it made informed on the various sentencing factors, but we require no such demarcations in the sentencing decision. The sentence in this case is the product of a proper exercise of discretion. The circuit court appropriately denied the postconviction motion.

By the Court.—Judgment and order affirmed.

This opinion shall not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

