COURT OF APPEALS
DECISION
DATED AND FILED

June 5, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2005AP2020-CR **Cir. Ct. No. 2004CF861**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIE CARTEZ JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN and CHARLES F. KAHN, JR., Judges. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Willie Cartez Jones pled guilty to one count of possession of cocaine with intent to deliver, one count of possession of marijuana, and one count of felony bail jumping. The circuit court sentenced Jones to eight

years of imprisonment for the cocaine charge, consisting of three years of initial confinement and five years of extended supervision; to a concurrent sentence of ninety days in the House of Correction for the marijuana charge; and to eight months for the felony bail jumping charge, to run consecutively to the cocaine sentence. The circuit court determined that Jones was not eligible to participate in the Earned Release Program.

¶2 On appeal, Jones argues that the circuit court erroneously exercised its sentencing discretion by not making an "individualized" sentencing decision. More specifically, Jones argues that the circuit court erroneously exercised its discretion when it denied him participation in the Earned Release Program. Because the totality of the circuit court's sentencing remarks set forth an adequate explanation for both the sentence and the Earned Release Program decision, we affirm.[1]

FACTS

¶3 After receiving a complaint about drug dealing, two police officers saw Jones standing on a porch making repeated hand-to-hand transactions with a woman. Based on their experience, training, and the nature of the complaint, the officers suspected that Jones was delivering drugs. When Jones saw the officers, he turned and ran into the house. The officers followed, and after a struggle, they arrested Jones. They found fifty-one "corner cuts" of cocaine base, plus additional chunks of cocaine base, in Jones's pants' pocket. The cocaine weighed 18.35 grams.

[1] Jones was sentenced by the Honorable Timothy G. Dugan. His postconviction motion was denied by the Honorable Charles F. Kahn, Jr.

¶4 Jones was released on pretrial bail. While released, Jones was arrested for possession of marijuana. He was charged with that offense and also charged with felony bail jumping. Jones pled guilty to all three charges.

¶5 In sentencing Jones, the circuit court first identified the three primary sentencing factors—the nature of the offense, the character of the defendant, and society's interest in punishment, deterrence and rehabilitation. *See* ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375, 380 (1999). The circuit court then turned to the particular facts of these crimes. The circuit court discussed the nature of the offenses at length. The circuit court stated that the offenses are "serious because of what drugs are doing throughout our community[,] … destroying the lives of individuals, of families, [and] of children." The circuit court also noted that "many of the other crimes we see in court every day are drug-related crimes."

¶6 The circuit court stated that a drug dealer has a "big impact" on the community, particularly on children. The circuit court noted that Jones was a "role model" for his four children who might "follow in [his] footsteps, … get caught[,] … get addicted, … [and] end up going to jail or prison." The circuit court said that Jones's "desire to make some money" by selling drugs, and thereby, damage the community and its children, "reflects upon your character, who you are, and it's not positive." The circuit court noted that drug dealers either sell drugs directly to the children and facilitate their addiction or sell drugs to parents who then cannot take care of their families.

¶7 The circuit court stated that a drug dealer "bring[s] crime and violence into the neighborhoods" leaving them unsafe for children and families. The circuit court observed that "[d]rug dealing is violent" and, although Jones did

not have a gun in these offenses, he did have a juvenile gun possession offense that the court viewed as "a red flag … because drugs and guns go hand-in-hand."

¶8 The circuit court concluded that "when you deal drugs, you endanger yourself, you endanger your family, your neighbors, and the community at large. And you bring devastation throughout the community, destruction into the lives of so many, and mostly kids."

¶9 The circuit court cited Jones's arrest for possession of marijuana while the cocaine case was pending as an "aggravating factor[]." The circuit court said that Jones "had all the resources of the juvenile system," but he had been "noncompliant" with juvenile supervision. The circuit court observed that Jones resisted arrest and fought the officers. The circuit court concluded that a prison sentence was "necessary to send [Jones] a message that there is going to be a consequence" for his criminal conduct.

¶10 After imposing sentence, establishing several conditions of extended supervision, and informing Jones of the impact of Truth-in-Sentencing, the circuit court stated "[c]onsidering all of the factors and circumstances, the Court's going to find the defendant not eligible … for the Earned Release Program."

DISCUSSION

¶11 Jones argues that the circuit court erroneously exercised its discretion because it did not "individualize its sentencing decision," including the denial of eligibility for the Earned Release Program. Jones contends that the circuit court "fail[ed] to assess [his] rehabilitative needs and … fail[ed] to demonstrably consider" his eligibility for the Earned Release Program. We are not persuaded.

¶12 When imposing a bifurcated sentence, WIS. STAT. § 973.01(3g) requires a circuit court, "as part of the exercise of its sentencing discretion, to decide whether the person being sentenced is eligible or ineligible to participate" in the Earned Release Program. A circuit court is not required to make discrete findings as to the reasons for its decision on eligibility for the Earned Release Program. *See* ***State v. Owens***, 2006 WI App 75, ¶9, 291 Wis. 2d 229, 234, 713 N.W.2d 187, 189. Rather, the circuit court properly exercises its discretion if "the overall sentencing rationale also justifies" the eligibility decision. ***Ibid.*** Therefore, the circuit court's reference to "all of the factors and circumstances" previously mentioned does not constitute an erroneous exercise of discretion.

¶13 We next address Jones's challenge to the sentence as a whole. In Jones's view, the circuit court's comments about the nature of the crime and the impact of drug dealing on the community do not support the sentence because they could have been made about any similar crime. We reject that argument, out of hand. The nature of the offense and its impact on the community are relevant sentencing factors. *See* ***Spears***, 227 Wis. 2d at 507, 596 N.W.2d at 380. The circuit court's consideration of them was entirely proper.

¶14 We also reject Jones's argument that the circuit court did not consider his individual circumstances or rehabilitative needs. The circuit court expressly noted that Jones had been afforded the rehabilitative resources of the juvenile system but that Jones was non-compliant. The circuit court also considered Jones's prior record, his resistance when being arrested, and the fact that he committed additional crimes while on bail—all aggravating factors that were specific to Jones, his character, and his rehabilitative needs.

¶15 In sum, the Record reflects an appropriate exercise of discretion that supports both the overall sentence and the non-eligibility for the Earned Release Program. Therefore, we affirm the judgment of conviction and order denying postconviction relief.

By the Court.—Judgment and order affirmed.

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