COURT OF APPEALS
DECISION
DATED AND FILED

February 12, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1564-CR **Cir. Ct. No. 99 CF 2828**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

KEVIN L. SENDEJO,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: BONNIE L. GORDON, Judge. *Affirmed and cause remanded with directions*.

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

¶1 PER CURIAM. Kevin L. Sendejo appeals from a judgment, an amended judgment, and an order denying his motion to modify his sentence. Sendejo claims that the corrected judgment is invalid because it was not ordered by the trial court and the sentence imposed was invalid because the trial court

failed to state adequate reasons for the specific sentence. Because the court needs to authorize a correction in the judgment, we remand the matter with directions to the trial court to enter a written order directing the clerk of court to make the appropriate correction on the written judgment of conviction. However, the sentencing court did not erroneously exercise its discretion when it imposed sentence and, therefore, we affirm on that issue.

I. BACKGROUND

¶2 Sendejo was charged with two counts of armed robbery, threat of force, as party to a crime. He was also charged with the penalty enhancer of concealing identity. Sendejo entered into a plea agreement, wherein he would plead guilty to two counts of armed robbery, threat of force, as party to a crime, and the State would dismiss the penalty enhancer. The maximum penalty for each count was forty years in prison.

¶3 Sendejo was sentenced to eighteen years in prison on the first count, and twenty-five years in prison on the second count. The twenty-five-year sentence for the second count was stayed in favor of a twelve-year period of probation, consecutive to the sentence on the first count. Judgment was entered in January 2000. The judgment entered, however, indicated that Sendejo was convicted of two counts of *robbery* rather than *armed robbery*. The judgment indicated that the severity of the crime was "Felony C" instead of "Felony B."

¶4 On May 21, 2001, Sendejo filed a postconviction motion alleging: (1) that the sentence should be commuted to ten years because a class "C" felony, here robbery, carried a maximum incarceration of only ten years; and (2) the trial court erroneously exercised its sentencing discretion by failing to adequately explain the eighteen-year sentence imposed.

¶5 On May 22, 2001, a corrected judgment was entered, which accurately reflected the two counts of *armed* robbery to which Sendejo pled guilty, and properly reflected the severity of the crimes as class "B" felonies. On May 23, 2001, the trial court denied the postconviction motion by written order, ignoring the first issue altogether, and ruling that there was no erroneous exercise of discretion on the second issue. Sendejo now appeals.

II. DISCUSSION

A. Judgment.

¶6 Sendejo contends that the corrected judgment is void because there is no indication that it was ordered by the court. We agree.

¶7 The record clearly demonstrates that Sendejo was convicted of *armed robbery*, not robbery. Accordingly, it cannot be disputed that the original judgment, which listed robbery, included a clerical error. The record, however, fails to indicate whether the corrected judgment was ordered by the circuit court. Our supreme court recently held that the clerk of the circuit court does not have the authority to correct a clerical error in the sentence portion of a written judgment of conviction. ***State v. Prihoda***, 2000 WI 123, ¶5, 239 Wis. 2d 244, 618 N.W.2d 857. Rather, the trial court must correct the error or direct the clerk's office to make the correction. ***Id.***

¶8 The State argues that the clerical error here was not "in the sentence portion." Although this argument may be technically correct, the errors in Sendejo's judgment directly affected the sentence portion and triggered an argument to commute his sentence. Accordingly, we conclude that under these circumstances, the trial court is required to "determine the merits of a request for a

change," ***id.***, and absent any indication in the record showing that the trial court authorized the corrected judgment here, the corrected judgment is void. Thus, we remand the matter with directions for the trial court to either correct the clerical errors in the original judgment, or direct the clerk's office to make the corrections.[1]

B. Sentence.

¶9 Sendejo also contends that the trial court erroneously exercised its discretion when it imposed an eighteen-year sentence. Sendejo argues that the trial court's reasons are so generic that they could apply to any sentence, and the trial court's lack of specificity renders the sentence erroneous. We disagree.

¶10 Sentencing decisions are left to the discretion of the trial court, and this court's review is limited to determining whether or not the trial court erroneously exercised its discretion. ***State v. Harris***, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984). This court is reluctant to interfere with the trial court's sentencing discretion. ***Id.*** In order to properly exercise its discretion, the trial court must consider three primary factors during the sentencing process: the gravity of the offense, the character and needs of the defendant, and the need to protect the public. ***State v. Evers***, 139 Wis. 2d 424, 451-52, 407 N.W.2d 256 (1987).

[1] Sendejo also argues that it was "rude" that the corrected judgment was never sent to Sendejo or his counsel. Without adopting this characterization, we agree that when a corrected judgment is entered, it would be appropriate to forward a copy to the defendant or defendant's counsel. However, as in ***State v. Prihoda***, 2000 WI 123, ¶33, 239 Wis. 2d 244, 618 N.W.2d 857, the oral pronouncement of the crime and sentence here was unambiguous, the oral pronouncement trumps the written judgment, the correction could readily be made, and a hearing with Sendejo present was not required under these circumstances.

¶11 The record reflects that the trial court did address each of these primary factors. Moreover, in the order denying the postconviction motion, the trial court pointed out:

> The court considered a great deal of information when it imposed sentence in this case. It first indicated that armed robbery was an extremely serious offense based, in part, on the amount of prison exposure the legislature saw fit to impose as a maximum penalty for the offense (forty years). The court also considered the defendant's family background, his age, his association with known gang members, his employment history, his medical history, and his prior juvenile conduct. It duly considered his rehabilitative needs and his degree of cooperation with the authorities…. Finally, the court acknowledged the particular involvement of the co-defendants and their respective histories prior to imposing sentence in Sendejo's case. For all of these reasons, the sentence imposed by the court was appropriate and not unduly harsh or excessive.

¶12 Sendejo argues that the trial court's sentencing reasons were "too generic" and the trial court failed to explain why an eighteen-year sentence, as opposed to a five-, ten-, or forty-year sentence, was appropriate. Although we acknowledge that at times the trial court spoke generally about the seriousness of the crime and need to protect the public, the sentencing, nonetheless, reflects a consideration of the appropriate factors and referenced the facts specific to this case that were most influential in the sentencing decision. Thus, we cannot conclude that the trial court erroneously exercised its discretion.

By the Court.—Judgment and order affirmed; amended judgment vacated and cause remanded with directions.

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