COURT OF APPEALS
DECISION
DATED AND FILED

November 6, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2441-CR **Cir. Ct. No. 00CF005858**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH A. LANDRUM,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: BONNIE L. GORDON and JEFFREY A. CONEN, Judges.[1] *Affirmed.*

Before Deininger, P.J., Vergeront and Lundsten, JJ.

---

[1] Judge Bonnie L. Gordon accepted Landrum's guilty plea and imposed sentence. Judge Jeffrey A. Conen denied the motion for resentencing.

¶1 PER CURIAM. Joseph Landrum appeals an amended judgment convicting him of theft as a party to the crime. He also appeals an order denying his postconviction motion for resentencing. The issues are: (1) whether the circuit court erroneously exercised its discretion in relying on information in the presentence investigation report and the report's sentencing recommendation; (2) whether the circuit court failed to adequately explain its sentence; (3) whether the sentence was unduly harsh or excessive; and (4) whether the circuit court improperly, without a hearing, denied Landrum's motion for resentencing based on a new factor. We affirm.

¶2 After pleading guilty, Landrum was convicted of theft as a party to the crime for taking approximately $7,000 worth of merchandise from his employer. The circuit court sentenced Landrum to eight years of imprisonment, with three years of initial confinement and five years of extended supervision. Landrum moved for resentencing, and the circuit court denied the motion.

¶3 Landrum first contends that the circuit court erroneously exercised its sentencing discretion because it relied on information in the presentence investigation report and the report's sentencing recommendation, even though the court had acknowledged that two corrections to the presentence investigation report were appropriate. We reject this argument. Just because two corrections were made to the report, it does not follow that the court could not rely on other parts of the report which Landrum conceded were accurate.

¶4 As for Landrum's contention that the court should not have followed the report's sentencing recommendation, the circuit court imposed a sentence that was at the lowest end of the recommendation made in the report, but did so only

after considering the corrections to the report and other appropriate sentencing factors. Therefore, there was no error.

¶5 Landrum contends that the circuit court did not adequately explain its sentence and that the sentence is too harsh. We will reverse the circuit court's sentencing decision only if the court misuses its discretion. ***State v. Spears***, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999). The primary factors the circuit court must consider are the gravity of the offense, the character and rehabilitative needs of the offender, and the need to protect the public. ***Id.*** at 507. The circuit court may base the sentence on any of the three primary factors after considering all of the relevant sentencing information. ***Id.*** at 507-08.

¶6 Again, we reject Landrum's arguments. The circuit court adequately explained the sentence, informing Landrum that he needed to spend time in prison because he had treatment needs that required a controlled setting and he continued to commit crimes while on community supervision. The circuit court also based its sentence on the fact that Landrum had prior felony convictions, was on parole at the time he committed this offense, and had breached the trust of his employer. Not only was the sentence adequately explained, we conclude the sentence was not unduly harsh given Landrum's history. Landrum is a repeat offender who has shown he is unwilling to comply with the law even while the Department of Corrections is supervising him.

¶7 Finally, Landrum argues that his post-sentencing rehabilitation constitutes a new factor, thereby making him eligible for resentencing. He also contends that the circuit court should have held a hearing on his sentence modification motion because he presented thorough and well-documented information to support his claim that he had made significant rehabilitative

progress after his conviction. In ***State v. Champion***, 2002 WI App 267, ¶1, 258 Wis. 2d 781, 654 N.W.2d 242, *review denied*, 2003 WI 32, 260 Wis. 2d 752, 661 N.W.2d 100 (Mar. 13, 2003) (No. 01-1894-CR), we held "that events subsequent to sentencing and relating to rehabilitation do not constitute a new sentencing factor." Therefore, even if Landrum's contention that he has made significant rehabilitative progress is accurate, no hearing was required because he is not entitled to relief based on ***Champion***. *See* ***State v. Bentley***, 201 Wis. 2d 303, 318, 548 N.W.2d 50 (1996) (the circuit court may, in the exercise of its discretion, deny a motion for postconviction relief without a hearing where the record conclusively demonstrates that the defendant is not entitled to relief).

¶8 Landrum contends that ***Champion*** is internally inconsistent. In ***Champion***, we refused to expand "new factor" law to include post-sentencing rehabilitation, explaining that to do so would undermine the legislature's intent to create certainty in the length of confinement at the time of sentencing. ***Champion***, 258 Wis. 2d 781, ¶17. Landrum contends this holding in ***Champion*** is contradicted by our statement that "[n]othing in this opinion affects a defendant's right to seek sentence modification under existing 'new factor' law." ***Id.*** There is no inconsistency. We simply observed that prisoners may continue to bring motions to modify sentences based on those factors considered "new factors" under existing case law, but refused to expand the definition of "new factor."

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).