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DISTRICT II

May 29, 2024

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Kenosha County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1391-CR

State of Wisconsin v. Efrain Tapia (L.C. #2021CF219)

Before Gundrum, P.J., Grogan and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Efrain Tapia appeals a judgment entered after he pled guilty to vehicle operator fleeing/eluding an officer resulting in bodily harm, contrary to WIS. STAT. § 346.04(3) (2021-22).¹ He also appeals from an order denying postconviction relief and an order denying reconsideration of that decision. He argues the circuit court erroneously exercised its discretion when it imposed absolute sobriety as a condition of extended supervision. Based upon our

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

In February 2021, a deputy sheriff assigned to freeway traffic enforcement noticed a vehicle (later identified as being driven by Tapia) traveling at a high rate of speed (104 MPH). The deputy caught up to Tapia and activated the squad's lights and sirens, after which Tapia accelerated and began weaving in and out of traffic. This resulted in a seven-mile, high-speed chase with speeds ranging between "the high-90s to over 130 MPH[.]" Eventually, Tapia exited the freeway, sped through a red light at an intersection, and crashed into a car, which caused serious injury to the occupant. The deputy then observed Tapia exit his car and attempt to flee, but after the deputy ordered him multiple times to lie down on the ground, Tapia complied.

After being arrested, Tapia explained he fled because he did not have a valid driver's license as his license (from Illinois) had been suspended for three prior speeding violations. Tapia also said that after he saw the squad car chasing him, he "FaceTimed"² his friend to ask what to do. The friend told Tapia to stop, but Tapia ignored that advice. The State charged Tapia with first-degree recklessly endangering safety and vehicle operator fleeing/eluding an officer resulting in bodily harm. Tapia accepted a plea bargain pursuant to which he pled guilty to the latter charge, and the State dismissed and read in the recklessly endangering safety charge. As a part of the plea bargain, the State did not make any sentence recommendation.

The presentence investigation report (PSI) noted that Tapia had no prior criminal record, was not under the influence of drugs or alcohol at the time of the offense, attributed mental

² This refers to a video call made from a cell phone.

health issues (feelings of depression and anxiety) as a factor that contributed to his poor decision-making with respect to this incident, and used alcohol and marijuana socially. The PSI recommended that the circuit court withhold sentence and place Tapia on one to two years of probation with a number of conditions, including that Tapia: (1) not “possess or consume alcoholic beverages and not ... have alcoholic beverages within the residence”; (2) not “possess or consume controlled substances, except by prescription”; and (3) “[c]omplete AODA Assessment and follow through with recommended treatment.”

The circuit court found the offense to be very serious and determined that probation would undermine its seriousness. The court also expressed concerns about protecting the public and punishing Tapia and thereafter sentenced him to two years’ initial confinement and three years’ extended supervision and imposed the three conditions the PSI recommended (identified above), together with random drug and alcohol testing.

Tapia filed a postconviction motion asking the circuit court to modify the supervision conditions. He argued that because his offense did not involve alcohol or drug use and he does not have a substance abuse problem, there was no basis for requiring absolute sobriety and random testing. The court denied the motion. It explained that “absolute sobriety is imperative to long lasting change taking place” and that it imposed the condition because it sought to ensure Tapia would make good decisions going forward. It also explained that using “mind altering substance[s] ... would be very problematic to good decision making,” particularly given Tapia’s history of mental health issues and the fact that Tapia chose to drive at excessively high speeds that endangered the safety of many while he was *not* under the influence. In other words, the court was concerned that given Tapia’s poor decision-making while sober, his choices would

pose an even greater threat to the public if made while using drugs or alcohol. The court also denied Tapia’s motion for reconsideration. Tapia now appeals.

The issue here is whether the circuit court erroneously exercised its discretion when it imposed an absolute sobriety extended supervision condition even though Tapia’s offense did not involve alcohol. WISCONSIN STAT. § 973.01(5) gives the circuit court “broad, undefined discretion” to impose conditions for a term of extended supervision. *State v. Galvan*, 2007 WI App 173, ¶¶8, 10, 304 Wis. 2d 466, 736 N.W.2d 890 (quoted source omitted). The court has the authority “to impose conditions as long as the conditions are reasonable and appropriate.” *State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499. Our review is limited to determining whether the condition the court imposed constituted an erroneous exercise of discretion. *State v. Stewart*, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165. This court “should not substitute [its] preference for a sentence merely because, had [it] been in the trial judge’s position, [it] would have meted out a different sentence.” *State v. Taylor*, 2006 WI 22, ¶18, 289 Wis. 2d 34, 710 N.W.2d 466 (quoting *McCleary v. State*, 49 Wis. 2d 263, 281, 182 N.W.2d 512 (1971)). This standard requires us to affirm when the circuit court considered the facts, applied the correct law, and reached a reasonable determination. See *Taylor*, 289 Wis. 2d 34, ¶18; see also *Industrial Roofing Servs., Inc. v. Marquardt*, 2007 WI 19, ¶41, 299 Wis. 2d 81, 726 N.W.2d 898. In assessing reasonableness, we consider “how well [the conditions] serve their objectives: rehabilitation and protection of the state and community interest.” *Stewart*, 291 Wis. 2d 480, ¶11; *State v. Miller*, 2005 WI App 114, ¶11, 283 Wis. 2d 465, 701 N.W.2d 47 (“Whether a condition of extended supervision is reasonable and appropriate is determined by how well it serves the dual goals of supervision: rehabilitation of the defendant and the

protection of a state or community interest.”); *State v. King*, 2020 WI App 66, ¶20, 394 Wis. 2d 431, 950 N.W.2d 891).

The conditions a circuit court imposes need not “directly relate to the defendant’s criminal conduct in the underlying conviction.” *Miller*, 283 Wis. 2d 465, ¶11. Thus, Tapia’s claim regarding the absence of alcohol or other prohibited substances in the underlying crime is not determinative as to whether the court erred. Rather, the condition must be reasonably related to either ensuring that Tapia does not commit more crimes or furthering his general rehabilitation. *See id.*; *see also State v. Rowan*, 2012 WI 60, ¶10, 341 Wis. 2d 281, 814 N.W.2d 854 (“A condition is reasonably related to the person’s rehabilitation ‘if it assists the convicted individual in conforming his or her conduct to the law.’”) (citation omitted)).

Having reviewed the Record and the circuit court’s reasons, we cannot conclude that the absolute sobriety condition constituted an erroneous exercise of discretion. At the postconviction hearing, the court explained its reasons for imposing this condition—both that it was necessary for Tapia’s rehabilitation and to protect the public. Specifically, the court noted that Tapia made a choice to flee at excessive speeds while *sober*, which caused the court grave concern about Tapia’s judgment should he use alcohol or drugs—something Tapia admitted he currently did socially. Moreover, Tapia himself had reported undiagnosed mental health issues and indicated those contributed to him committing this offense, and the potential combination of

mental health issues and drug or alcohol use also caused the court concern.³ Further, the PSI recommended an absolute sobriety condition during supervision. This is not surprising as it “is common knowledge ... that alcohol consumption ‘may impair judgment’ and is ‘often linked to violent or aggressive behavior.’” *State v. Davis*, 2017 WI App 55, ¶16, 377 Wis. 2d 678, 901 N.W.2d 488. Based on the foregoing, we conclude that the conditions imposed were reasonably related to both ensuring that Tapia does not commit additional crimes and to furthering his rehabilitation as he learns to make choices that will not endanger his own life or the lives of those in the community.⁴

Therefore,

IT IS ORDERED that the judgment and orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

³ In his request that the court reconsider its denial of his postconviction motion regarding the absolute sobriety condition, Tapia submitted a copy of Department of Corrections records indicating that he did not have any present mental health concerns and asserted that “the lack of any mental health needs” was contrary to the circuit court’s reliance on “undiagnosed mental health issues” in imposing the absolute sobriety condition as explained at the postconviction hearing. We are not convinced that this establishes an erroneous exercise of discretion, particularly given that Tapia himself attributed his decision-making at the time of the offense to his mental health. Moreover, that Tapia did not have any apparent mental health concerns at a specific point in time during the course of serving his sentence does not diminish any mental health concerns that existed at the time the court imposed the absolute sobriety condition.

⁴ We are not persuaded by Tapia’s claim that this condition was an improper “one-size-fits-all” condition that could be imposed in any case. The circuit court identified sufficient connection between this condition and Tapia specifically for it to be reasonable in this case.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals