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**DISTRICT II**

December 16, 2015

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2015AP846-CR	State of Wisconsin v. Defabian L. Golden (L.C. #2010CF58)
2015AP847-CR	State of Wisconsin v. Defabian L. Golden (L.C. #2010CF59)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

In these cases, consolidated for purposes of briefing and disposition, Defabian L. Golden appeals from judgments convicting him upon his guilty pleas to possession of THC, second or greater offense, and to party to a crime (PTAC) of first-degree recklessly endangering safety and attempted armed robbery, all as a repeater. He also appeals from the order denying his motion for postconviction relief.<sup>1</sup> Golden claims the trial court erroneously exercised its discretion at

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<sup>1</sup> Golden does not appeal the part of the order vacating the restitution orders.

sentencing. We disagree and affirm. Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21.

A drug transaction Golden arranged ended up with his co-actor, Maurice Collins, shooting the sellers when they refused Collins's demand to hand over the drugs. Golden was charged with one count of possession with intent to deliver THC, two counts each of PTAC attempted first-degree intentional homicide and attempted armed robbery with use of force, and one count of misdemeanor bail jumping. All of the crimes were charged with a repeater enhancer. Golden ultimately entered guilty pleas to one count each of possession of THC, PTAC first-degree recklessly endangering safety, and PTAC attempted armed robbery with use of force, all as a repeater. The remaining counts, plus charges of battery by prisoner, mayhem, and disorderly conduct that arose while Golden was in the county jail, were dismissed and read in.

The court fashioned a global twenty-three-year sentence, comprising nine years' initial confinement and fourteen years' extended supervision. Postconviction, Golden sought sentence modification on the basis that the sentence imposed was unduly harsh. The court denied the motion after a hearing. Golden appeals.

Golden challenges only the severity of his sentence. He contends the court gave short shrift to his cooperation with authorities in bringing Collins to justice, his remorsefulness, and his positive character traits. He also asserts that the court relied on an inaccurate statement in the PSI that he belonged to a gang and on an incomplete understanding of what led to the jail charges, i.e., that they arose because staff "provoked" and "harassed" him. Finally, he claims that, as his counsel did not give the court numerous letters from his friends and family, it was unaware at sentencing of his strong support network.

A sentencing decision is discretionary, and a defendant challenging a sentence must overcome the presumption that the trial court acted reasonably. *State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998). The primary sentencing factors are the gravity of the offense, the character of the offender, and the need for the public’s protection. *Elias v. State*, 93 Wis. 2d 278, 284, 286 N.W.2d 559 (1980).

The court thoroughly addressed the sentencing factors. It considered the aggravated nature of the crimes, the positive and negative aspects of Golden’s character, the large number of read-ins, and the need to protect the public from one whose lengthy criminal history shows he cannot conform to rules. Postconviction, the court explained that a show of support matters for one being considered for probation but “this wasn’t even a close call on probation.” It also addressed each of Golden’s points and concluded that its sentence was not “off the rails.” See *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (sentencing court has additional opportunity to explain sentence when challenged by postconviction motion).

A defendant has a constitutionally protected due process right to be sentenced upon accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. If the PSI was incorrect about a gang affiliation, the time to object was at sentencing. See *State v. Mosley*, 201 Wis. 2d 36, 45-46, 547 N.W.2d 806 (Ct. App. 1996). The same goes for his complaint that the court considered the jail offenses without “the full story” about who instigated them. See *State v. Leitner*, 2001 WI App 172, ¶41, 247 Wis. 2d 195, 633 N.W.2d 207 (failure to contemporaneously object to allegedly inaccurate information at sentencing constitutes waiver).

Golden faced forty-six years’ imprisonment—in part due to the repeater enhancers. He got twenty-three. The court made the sentence for the attempted armed robbery concurrent,

resulting in no additional confinement. The sentence is not so excessive and unusual, or so disproportionate to the offense, that it shocks public sentiment and violates the judgment of reasonable people. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order of the trial court are summarily affirmed.

WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*