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DISTRICT II

January 20, 2016

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

2015AP685-CR

State of Wisconsin v. Kareem B. Smith (L.C. # 2009CF838)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Kareem Smith appeals from a judgment sentencing him after revocation of his probation for two counts of intimidating a victim and two counts of second-degree recklessly endangering safety and false imprisonment, all as domestic abuse incidents committed by a habitual criminal. Smith also appeals from a circuit court order denying his motion for sentence modification or for resentencing. Based upon our review of the briefs and record, we conclude at conference that

this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

At Smith's May 2014 sentencing after revocation, the circuit court stated that it reviewed the revocation order and warrant, the presentence investigation report from the original sentencing, and the revocation packet. The grounds for revocation included consuming alcohol and cocaine, failing to report his whereabouts to his agent,² failing to submit urine samples, and repeatedly contacting the victim. Smith admitted that he did not comply with the probation requirement that he pursue alcohol and drug treatment. It is undisputed that the circuit court did not review the transcript of the August 2010 sentencing at which the court withheld sentence and imposed five years of probation.

As it fashioned a sentence addressing punishment, deterrence, community safety and rehabilitation, the 2014 circuit court considered the nature of the offenses, Smith's character, and the need to protect the public. The court noted that Smith failed "spectacularly" on probation. The court considered the allegations in the complaint and the victim's opinion that the domestic violence and related problems arose when Smith was using drugs. The court found Smith's offenses quite aggravated; the victim experienced an extreme level of domestic violence and threat of domestic violence. The court found that the primary sentencing considerations were safety and punishment. Rehabilitation would have to occur in a confined setting via an enforced period of sobriety. Across the five counts, the court imposed a twenty-four-year sentence

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² Smith's whereabouts were unknown until he was arrested.

consisting of nine years of initial confinement and fifteen years of extended supervision, some concurrent and some consecutive.

Postconviction, Smith argued that he should be resentenced because the circuit court did not review and consider the transcript of the original sentencing and failed to sufficiently explain why a nine-year term of confinement and fifteen years of extended supervision were necessary to achieve the sentencing objectives.

After a hearing on the postconviction motion, the circuit court found that at the time of the May 2014 sentencing after revocation, the August 2010 sentencing transcript was not in the record. Prior to the revocation sentencing, the court reviewed the available relevant record items (the complaint, the presentence investigation report and materials relating to the probation revocation). The court noted that it and the 2010 sentencing court had access to the same information to evaluate the severity of the offenses and assess Smith's individualized sentencing needs, including the role drug addiction played in his conduct. The 2014 court had additional information as a result of the probation revocation, which information rightly cast Smith in a different light. *State v. Reynolds*, 2002 WI App 15, ¶13, 249 Wis. 2d 798, 643 N.W.2d 165. The 2010 transcript did not add any information necessary to forming the 2014 sentencing rationale. *Id.*, ¶14. Furthermore, the 2014 court was not bound by the 2010 court's view of the case and sentencing rationale. *Id.*

With regard to the exercise of sentencing discretion, the circuit court noted that it considered the appropriate factors and it was not required to make a formulaic connection between those factors and the length of the particular sentences imposed. The court reviewed its sentencing rationale and concluded that it properly exercised its discretion. Smith appeals.

On appeal, Smith argues that the circuit court erred when it did not consider the original court's sentencing rationale.³ Under the circumstances of this case, we see no error.

There is no bright-line rule requiring that a court sentencing after revocation of probation review the original sentencing transcript. *State v. Walker*, 2008 WI 34, ¶26, 308 Wis. 2d 666, 747 N.W.2d 673. Rather, reviewing the original sentencing transcript may only be necessary in some cases. *Id.* We conclude that it was not necessary in this case. The charge to the court sentencing after revocation is to be familiar with the particulars of the case. *Id.*, ¶28. The circuit court had access to and reviewed the same information as the 2010 sentencing court. The 2014 court demonstrated its familiarity with the particulars of Smith's case.

The original and post-revocation sentencing courts looked at the case the same way.⁴ The post-revocation court imposed an individualized sentence based on the facts before it, including Smith's "spectacular" failure on probation. The conduct that led to Smith's probation revocation

³ The premise of Smith's argument is that the circuit court should have reviewed the 2010 sentencing transcript as part of the 2014 sentencing after revocation. However, Smith does not address the circuit court's postconviction finding that the 2010 sentencing transcript was not in the record at the time of the 2014 sentencing after revocation. The circuit court docket entries support the court's finding: the 2010 transcript was filed more than two months after the 2014 sentencing after revocation. We do not address the legal significance, if any, of the failure to have the 2010 transcript prepared before the sentencing after revocation because (1) the issue is neither preserved for appeal nor argued to us; and (2) the 2014 court's failure to consider the 2010 transcript was not error under the circumstances of this case.

⁴ The 2010 sentencing court considered that Smith pled guilty to the crimes of conviction. The court described the crimes of conviction as part of a rampage over three separate days. The court found that Smith had been smoking crack cocaine and was likely under the influence of that drug when he committed the crimes. The victim fears the defendant who is violent when he is under the influence of drugs. The court considered Smith's prior offenses, which were similar to the offenses of conviction (domestic violence, battery, criminal damage to property and trespass, and disorderly conduct). Smith had "an overriding addiction to crack cocaine" and he is violent toward women when high on drugs. The court withheld sentence and imposed a five-year period of probation. The court required Smith to participate in alcohol, drug and domestic violence treatment and refrain from consuming alcohol and controlled substances.

shed light on Smith and was relevant to the sentencing court's decision. *Reynolds*, 249 Wis. 2d 798, ¶13.

We turn to Smith's misuse of sentencing discretion claim. A sentencing court's discretionary decision must have a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The weight to be given the various factors is within the sentencing court's discretion. *State v. Fisher*, 2005 WI App 175, ¶20, 285 Wis. 2d 433, 702 N.W.2d 56. As long as the sentencing court "considered the proper factors and the sentence was within the statutory limitations, the sentence will not be reversed unless it is so excessive as to shock the public conscience." *State v. Owen*, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996). A defendant is not entitled to a mathematical breakdown of how each sentencing factor translates into a specific number of years in the sentence. *Fisher*, 285 Wis. 2d 433, ¶¶21-22.

In fashioning the sentence, the court considered the seriousness of the offenses, Smith's character and history, his need for sobriety and rehabilitation in a confined setting, his failure on probation, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court found that Smith had not been able to control his drug addiction and in violating his probation, had engaged in conduct similar to the crimes of conviction. The court stated a rational basis for imposing a lengthy sentence under all the circumstances and did not misuse its discretion.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals