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DISTRICT IV

April 8, 2016

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

2015AP1782-CR State of Wisconsin v. Sambath Pal (L.C. # 2014CF766)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Sambath Pal appeals a judgment convicting him of two counts of hit and run and an order denying his postconviction motions. On appeal, Pal argues that the circuit court erroneously exercised its discretion in imposing his sentence. He also argues that it was multiplicitous for the State to charge him with two counts of hit and run for a single act of fleeing an accident that caused two deaths. Based upon our review of the briefs and record, we conclude at conference

that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2013-14).[1]

Pal pled guilty to two counts of hit and run involving death pursuant to WIS. STAT. § 346.67(1), arising from a motor vehicle accident in which he struck two motorcyclists, causing their deaths. *See* WIS. STAT. § 346.74(5)(d) (classifying hit and run involving death as a Class D felony). The circuit court sentenced Pal to ten years of initial confinement and ten years of extended supervision on each count, to be served consecutively. He faced a maximum term of fifteen years of initial confinement and ten years of extended supervision on each count. *See* WIS. STAT. § 973.01(2)(b)4. and (d)3. On appeal, he argues that the sentence is unduly harsh. For the reasons discussed below, we disagree.

There is a presumption that a sentence "well within the limits of the maximum sentence" is not unduly harsh. ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted). Pal concedes this point in his appellant's brief. Nonetheless, he argues that the circuit court erroneously exercised its sentencing discretion. He asserts that the court improperly considered his flight from the accident scene and the death of the victims to be aggravating factors in imposing sentence. Pal argues that those factors should not have been considered aggravating because they are elements of the crime of hit and run.

However, as the circuit court stated in its ruling denying Pal's postconviction motions, the court "did not find the flight, the immediate leaving of the scenes itself, to be an aggravating factor" but, rather, Pal's actions after he left the scene to be aggravating factors. The transcript

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

of the sentencing hearing supports this statement. At sentencing, the court considered at length Pal's actions in the days after he left the accident scene and the fact that he never turned himself in, even when questioned about the accident by his girlfriend and his father. For example, the court discussed the fact that, following the accident, Pal went to his girlfriend's parents' house but did not mention the accident, even when his girlfriend questioned him about it after she heard about a fatality accident involving a car that matched the description of the car Pal drove. The court also discussed how Pal then went to his father's home and, when confronted by his father about vehicle damage, Pal said he hit something but did not tell him what he hit. The court stated that, for four days, Pal did not turn himself in and that, finally, it was Pal's father who told the police about his involvement in the accident. The court also referenced the fact that Pal performed internet searches from his phone after the accident, seeking information on how to escape a hit and run and what penalties he faced. The court concluded, based on these and other facts in the record, that Pal's actions showed a lack of remorse and responsibility. Thus, we are satisfied that the sentence is not unduly harsh and that the court considered proper factors in imposing it.

We turn next to Pal's argument that it was multiplicitous, in violation of his constitutional protection against double jeopardy, for the State to charge him with two counts of hit and run for a single act of flight from the accident scene. *See generally* U.S. CONST. amend. V. Pal concedes that the multiplicity issue he raises was resolved in a previous published court of appeals decision, ***State v. Hartnek***, 146 Wis. 2d 188, 430 N.W.2d 361 (Ct. App. 1988). In ***Hartnek***, the defendant pled no contest to two counts of hit and run, after he struck two vehicles while driving and then fled the scene without rendering aid to two injured victims. 146 Wis. 2d at 191. The circuit court concluded that a single event of failing to stop and render aid may give

rise to multiple charges when there are multiple victims. ***Id.*** Pal urges us to reverse ***Hartnek***, even while acknowledging that the holding is still good law. We lack the power to do so, and we reject Pal's multiplicity argument on that basis. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (only the supreme court has the power to overrule, modify or withdraw language from a published opinion of the court of appeals).

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

Diane M. Fremgen
Clerk of Court of Appeals