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DISTRICT IV

May 11, 2016

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

2015AP1017-CR State of Wisconsin v. Robert W. Palen (L.C. # 2014CF30)

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

Robert Palen appeals judgments convicting him of multiple crimes, as well as an order denying his postconviction motion for resentencing. He argues that the circuit court erroneously exercised its discretion when it imposed the maximum sentences for the five crimes. He further argues that the court placed disproportionate weight on pending out-of-state charges against him. Based upon our review of the briefs and record, we conclude at conference that this case is

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

This case arises out of an encounter between Palen and a woman, N.S., whom he met on the internet. They arranged to meet in person at N.S.'s home. Palen attempted to have vaginal intercourse with N.S. against her will, and put his hands around her neck and threatened her. N.S. stopped struggling, out of fear of being killed. Palen again attempted to have intercourse with her, choked her, and punched her in the face. After N.S. reported the incident, Palen sent her a letter asking her either not to show up in court or to tell the court that he did not sexually assault her.

Palen pled guilty to two felony and three misdemeanor counts arising out of the incident with N.S. The circuit court imposed the maximum sentence as to each of the five counts. For the two felony counts of strangulation and suffocation, the court imposed three years of initial confinement and three years of extended supervision on each count, to be served consecutively. *See* WIS. STAT. §§ 940.235(1) (classifying the offense as a Class H felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony) (2011-12 Stats.). For the misdemeanor counts of fourth-degree sexual assault, battery, and intimidation of a victim, the court imposed the maximum imprisonment term of nine months for each, to be served consecutively. *See* WIS. STAT. §§ 940.225(3m); 940.19(1); and 940.44(2) (classifying the offenses as Class A

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

misdemeanors); 939.51(3)(a) (providing maximum imprisonment term of nine months for a Class A misdemeanor) (2011-12 Stats.).

We reject Palen's argument that the sentences constitute an erroneous exercise of discretion. A defendant bears a "heavy burden" of establishing that a court erroneously exercised its sentencing discretion. ***State v. Harris***, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. Here, the court considered the standard sentencing factors and explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offenses, the court stated that this case involved "a vulnerable victim that was brutally pummeled." With respect to Palen's character, the court noted that Palen changed his story several times about what happened. The court also noted that Palen engaged in significant manipulative behavior, both in his interactions with N.S. at her home and when he later attempted to persuade her to interfere with the court proceedings against him. The court also considered, as a possible mitigating factor, a letter from Palen's parents that characterized him as family oriented and a good father. However, the court did not find the letter to be persuasive, in light of the other facts in the record. The court concluded that, in order to protect the public, foster rehabilitation, and punish Palen, maximum sentences were necessary. Under the circumstances, nothing in the record or in Palen's briefs persuades us that imposing the maximum sentences was an erroneous exercise of the circuit court's discretion.

Palen also argues that the circuit court relied on an improper sentencing factor when it gave "disproportionate" attention to pending sexual assault charges against him in Pennsylvania. We reject this argument because our review of the sentencing transcript reveals that the court's references to the Pennsylvania charges make up a very small portion of the court's sentencing rationale. The court's sentencing rationale covers five pages of transcript. In only two sentences

does the court reference the pending out-of-state charges, and nothing in the transcript suggests that the court placed disproportionate weight on those charges when it imposed Palen's sentence.

Finally, Palen complains near the end of his appellant's brief that the Office of the State Public Defender could not afford to investigate the pending Pennsylvania matter. However, he fails to develop the argument and relies largely on conclusory assertions. We decline to consider the argument on that basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider undeveloped legal arguments).

IT IS ORDERED that the judgments and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals