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DISTRICT IV

August 24, 2017

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

2016AP2053-CR State of Wisconsin v. Christopher B. Ryckman (L.C. # 2015CF213)

Before Lundsten, P.J., Blanchard, and Kloppenburg, 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).

Christopher Ryckman appeals a judgment of conviction and an order denying postconviction relief. Ryckman contends that the circuit court erroneously exercised its sentencing discretion by failing to explain why the sentence it imposed was the minimum necessary. He also contends that the circuit court erroneously denied his postconviction motion, and that the record does not support the court's exercise of its sentencing discretion. 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 (2015-16).[1] We summarily affirm.

In June 2015, Ryckman was charged with assault by prisoner, as a repeater. According to the criminal complaint, Ryckman, then an inmate at Fox Lake Correctional Institution, spat on a correctional officer who had intervened in Ryckman's suicide attempt. Pursuant to a plea agreement that was described at a plea and sentencing hearing, Ryckman pled no-contest and the State recommended a sentence of one year of initial confinement and two years of extended supervision. Ryckman argued for a lengthy term of probation with six months of conditional jail time. The court imposed the sentence recommended by the State.

Ryckman moved for postconviction relief, arguing that the circuit court erroneously exercised its sentencing discretion. The court denied the motion.

Sentencing is a matter within the circuit court's discretion. ***State v. Echols***, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). A sentencing court properly exercises its discretion if it examines the facts in the record and states its reasons for the sentence imposed, using a demonstrated rational process. ***State v. Spears***, 147 Wis. 2d 429, 447, 433 N.W.2d 595 (Ct. App. 1988). "To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record." ***State v. Cooper***, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983) (citation omitted).

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

A sentencing court must consider facts relevant to the pertinent sentencing objectives and factors. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The principal sentencing objectives include protecting the community, punishing and rehabilitating the defendant, and deterring others. ***Id.*** (citation omitted). The primary sentencing factors include the gravity of the offense, the defendant's character, and the need to protect the public. ***Id.*** (citation omitted). The court must explain the reasons for the particular sentence it imposes. ***State v. Gallion***, 2004 WI 42, ¶¶48-50, 270 Wis. 2d 535, 678 N.W.2d 197.

Ryckman contends that the circuit court erroneously exercised its discretion by failing to explain why it imposed a sentence of one year of initial confinement rather than a sentence of probation with conditional jail time. Ryckman concedes that the circuit court explained, on the record, why it imposed a period of confinement. He contends, however, that the circuit court erred by failing to explain why one year of initial confinement was the minimum necessary to meet the court's sentencing objectives, as opposed to the defense recommendation of probation with conditional jail time. Ryckman points out that a sentencing court must consider probation as the first alternative, *see* ***id.***, ¶25, and contends that it is not clear from the record why probation with conditional jail time would have been insufficient. He posits that the circuit court could have imposed probation with one year of conditional jail time, and that nothing in the record indicates that probation with jail time could not have satisfied the court's sentencing objectives. We disagree.

At sentencing, the court explained that it considered that Ryckman's action of spitting on a correctional officer was "vile" and "disgusting"; that the officers had been trying to help Ryckman during an apparent suicide attempt; that Ryckman was in a bad situation at the time; Ryckman's positive character as presented by his demeanor and his letter to the court; and

Ryckman's lengthy criminal history, including serious offenses. The court explained that it determined that confinement was necessary to protect the public and that anything less than confinement would unduly depreciate the seriousness of the offense. The court explained that, after considering the court's sentencing objectives and the relevant sentencing factors, the court determined that one year of initial confinement and two years of extended supervision was the appropriate sentence to impose. Thus, the court satisfied its obligation to explain the reasons for the sentence it imposed. *See* ***id.***, ¶¶48-50.

We reject Ryckman's argument that a sentencing court must provide a specific explanation on the record as to why the particular sentence it imposes is the minimum amount of confinement necessary to meet its sentencing objectives. In ***Gallion***, our supreme court recognized that formulating a term of confinement does not lend itself to mathematical precision. *See* ***id.***, ¶49. Rather, sentencing courts are expected to provide "an explanation for the general range of the sentence imposed." ***Id.*** Thus, a sentencing court is not required "to provide an explanation for the precise number of years chosen." ***State v. Taylor***, 2006 WI 22, ¶30, 289 Wis. 2d 34, 710 N.W.2d 466. We have also explained that, while a sentencing court "should impose 'the minimum amount of custody' consistent with the appropriate sentencing factors, … each sentence must navigate the fine line between what is clearly too much time behind bars and what may not be enough." ***State v. Ramuta***, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 (quoted source omitted). The circuit court did so here.

Next, Ryckman contends that the circuit court erred by denying his postconviction motion. Ryckman notes that, in denying Ryckman's postconviction motion, the circuit court found that the court had properly exercised its sentencing discretion. The court explained that it had considered the standard sentencing factors and objectives, and considered probation as the

first alternative. The court also explained that it considered Ryckman's character, as reflected in Ryckman's "extremely well-written" letter to the court. Ryckman contends, however, that the court did not explain how the facts in the record, including Ryckman's letter, rendered probation inappropriate. We conclude, for the reasons set forth above, that the circuit court properly denied Ryckman's postconviction motion based on its correct finding that it had properly exercised its sentencing discretion.[2]

Finally, Ryckman contends that the record does not support the circuit court's exercise of discretion. *See* ***State v. Hall***, 2002 WI App 108, ¶19 n.9, 255 Wis. 2d 662, 648 N.W.2d 41 (we will search the record for reasons to sustain the circuit court's exercise of its sentencing discretion, but we will not insert new rationalizations into the court's sentencing decision). Because we have already determined that the court properly exercised its sentencing discretion, we need not search the record for reasons to sustain the sentencing.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

[2] Ryckman also notes that, in its decision denying Ryckman's postconviction motion, the circuit court stated that the crime Ryckman committed and the environment in which it was committed limited the court's rational sentencing options. Ryckman states that it is unclear whether the court was asserting that probation is never appropriate for the offense of assault by prisoner. He asserts that, if the court was stating that probation is never appropriate for this offense, the sentence would be improper as a preconceived sentence. *See* ***State v. Ogden***, 199 Wis. 2d 566, 571, 544 N.W.2d 574 (1996). We do not read the circuit court's statement as indicating that it believed probation would never be appropriate for this offense. Rather, the circuit court stated that the facts of Ryckman's offense rendered probation inappropriate. We do not address further Ryckman's contention that the court may have had a preconceived idea about the sentence it would impose.

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

Diane M. Fremgen
Clerk of Court of Appeals