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**DISTRICT IV**

December 12, 2017

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

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2017AP104-CR	State of Wisconsin v. Jerry R. Badon, Jr. (L.C. # 2015CF483)
2017AP105-CR	State of Wisconsin v. Jerry R. Badon, Jr. (L.C. # 2015CF1586)
2017AP106-CR	State of Wisconsin v. Jerry R. Badon, Jr. (L.C. # 2015CF2369)

Before Sherman, Blanchard and Fitzpatrick, 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).**

Jerry Badon, Jr. appeals from three judgments of conviction for armed robbery and an order denying his postconviction motion for sentence modification. Badon argues that the circuit court relied on an improper factor when sentencing 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 (2015-16).<sup>1</sup> We reject Badon’s arguments and affirm.

In three cases that have been consolidated for appeal, Badon was charged with several offenses based on a series of robberies. These robberies targeted victims who were potentially involved in unlawful activity. For example, two victims were robbed after agreeing to a marijuana sale, and another victim was robbed after arranging to purchase a gun from Badon. In each of the three cases, Badon pleaded guilty to one count of armed robbery as party to a crime, and the remaining charges were dismissed but read in for sentencing purposes.

At the sentencing hearing, the circuit court discussed Badon’s criminal history, explaining that Badon had committed these offenses while out on bail for several other pending charges. The court noted that Badon did not take advantage of this opportunity for rehabilitation, but instead decided to continue to engage in criminal conduct, including bail jumping. The court considered the potential mitigating factor of Badon’s childhood trauma, but explained that this sort of trauma typically affects impulse control and is less relevant in light of the premeditated nature of Badon’s offenses. The court described Badon’s victims as “exceedingly vulnerable” because they were less likely to contact police because of their own potentially criminal conduct. The court considered Badon’s “wanton and extreme cruelty,” noting that Badon had caused his victims physical pain, put them in fear of their lives, and dehumanized them. The court discussed the fact that Badon had repeatedly changed his story, which suggested a lack of remorse and a failure to accept responsibility. Although the court believed that rehabilitation was still possible given Badon’s young age, it concluded that a prison sentence was necessary in

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

light of the need to protect the public and the seriousness of his offenses. The circuit court sentenced Badon to three years of initial confinement and three years of extended supervision for each of the three convictions, and ordered that the sentences be served consecutively.

Badon filed a postconviction motion arguing that the circuit court erred because it considered the vulnerability of his victims as an aggravating factor when sentencing him. The circuit court denied this motion, and Badon appeals.

Sentencing is within the discretion of the circuit court and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. “Circuit courts are required to specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, ¶40. We presume that a circuit court’s sentence is reasonable, which means “[t]he burden on a defendant to show an erroneous exercise of discretion is heavy.” *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion. *Gallion*, 270 Wis. 2d 535, ¶17.

Badon argues that the circuit court erred because it considered the vulnerability of his victims. Badon asserts that none of his victims were blameless or innocent because they were each engaging in potentially unlawful conduct involving drugs or guns at the time of the robberies. He further contends that the case law discussing the vulnerability of victims typically involves victims who are young, and physically or emotionally fragile. *See State v. Reynolds*, 2002 WI App 15, ¶7, 249 Wis. 2d 798, 643 N.W.2d 165 (describing a thirteen-year-old victim as vulnerable because his mother had died and he had been sent to live with the defendant and was

cut off from his family); *State v. Edmunds*, 229 Wis. 2d 67, 78, 598 N.W.2d 290 (1999) (describing a seven-month-old child as “vulnerable” because she had no way to protect herself from the defendant). In contrast, Badon contends the victims in this case were not physically or emotionally fragile and were close to Badon’s age or older.

We disagree that the circuit court erred when it described Badon’s victims as “vulnerable” or that it erroneously exercised its discretion by considering this factor when sentencing him. The court was responding directly to an assertion in the private presentence report submitted by Badon that Badon’s victims were not vulnerable. The court explained why Badon’s offenses require a broader understanding of what it means to target a vulnerable victim, and why Badon’s decision to rob these particular individuals was relevant. Specifically, these victims are less likely to report the robberies due to their own involvement in potentially unlawful activity, which in turn indicates that Badon made a calculated decision to target these victims in order to minimize the risk of apprehension. We conclude that this was a relevant consideration at sentencing as it relates to the nature of Badon’s offenses as well as the need to deter others from targeting these sorts of victims.

Moreover, as discussed above, the circuit court considered the vulnerability of Badon’s victims alongside many other pertinent factors for sentencing. *See Gallion*, 270 Wis. 2d 535, ¶40 (a sentencing court should consider protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others). Badon does not challenge any other aspect of the circuit court’s lengthy and thorough explanation of its sentence. We therefore conclude that the circuit court properly exercised its discretion when sentencing Badon.

Upon the foregoing reasons,

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

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

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