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DISTRICT II

December 20, 2017

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

2017AP687-CR

State of Wisconsin v. Jaydan K. Funches (L.C. #2016CF188)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Jaydan K. Funches appeals from a judgment convicting him of attempted robbery with use of force as party to a crime and an order denying his motion for postconviction relief. Funches argues that the circuit court erroneously exercised its discretion by imposing an excessive sentence as the court relied on factors not supported in the record. 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.

Funches was charged with three counts of robbery with use of force, one count of attempted robbery with use of force, and one count of burglary of a building or dwelling, all as party to a crime.² Funches was linked to the robberies through the statements of his co-actors, a GPS monitoring device, and \$222 found on his person. Funches pled no contest to one count of attempted robbery, and the remaining charges were dismissed and read in.

At sentencing, the circuit court refused to accept the recommendation of probation and jail time, explaining that the charges were serious. The court expressed concern that Funches lied about where the money found on him came from; the physical violence involved in the crimes; and Funches' significant juvenile record, anger problems, and lack of remorse. The court sentenced Funches to four years' initial confinement and two and one-half years' extended supervision.

Funches filed a postconviction motion for sentence modification, arguing that the court found Funches was *the* leader of the group involved in the robberies, which was erroneous as neither Funches nor his co-actors made that claim and it was not supported by the record. The court held a hearing on the motion and clarified that it “never said that [Funches] was the leader or the ring leader or the instigator” and that it only took issue with Funches portrayal of himself as “a follower” as he was “actively involved in the offense.”

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

² Although Funches was sixteen at the time of the robberies, he was waived into adult court.

Sentencing decisions are within the discretion of the circuit court. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We review a sentence imposed by the circuit court under “the presumption that the circuit court acted reasonably,” and “[w]e will not interfere with the circuit court’s sentencing decision unless the circuit court erroneously exercised its discretion.” *State v. Lechner*, 217 Wis. 2d 392, 418-19, 576 N.W.2d 912 (1998). An exercise of discretion “must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.” *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971).

We conclude that the circuit court did not erroneously exercise its discretion at sentencing. The court considered the appropriate sentencing factors and set forth on the record the reasons for the sentence. *See Gallion*, 270 Wis. 2d 535, ¶¶40-43. As to the court’s statements, Funches mischaracterizes the court’s remarks concerning his involvement in the crimes. The court never stated that Funches was “the leader” of the group, indicating instead that he was “a leader” as opposed to “a follower.” As the court explained at the motion hearing, it used the term “leader” to indicate that he actively participated in the crimes and committed violence against the victims under circumstances that did not suggest that Funches was “an innocent ... follower who was being caught up in the situation.” This characterization is supported by evidence in the record. The fact that Funches disagrees with the circuit court’s characterization does not establish by clear and convincing evidence that the circuit court erroneously exercised its direction.

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

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

Diane M. Fremgen
Clerk of Court of Appeals