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DISTRICT II

December 20, 2017

To:

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

2017AP849-CR

State of Wisconsin v. Shannon K.M. McCullagh-Hurley
(L.C. #2016CF252)

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).

Shannon K.M. McCullagh-Hurley (Appellant) appeals from a judgment convicting her of possession of materials for manufacturing methamphetamine and an order denying her motion for postconviction relief. Appellant argues that the circuit court erroneously exercised its sentencing discretion by rejecting probation and engaging in “mechanistic rather than individualized sentencing.” 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.

Appellant was charged with possession of methamphetamine, possession of material for manufacturing methamphetamine, and possession of THC, all as party to a crime. Appellant admitted to having a “meth problem” and allowing her friend to manufacture methamphetamine in Appellant’s home. Appellant pled no contest to possession of material for manufacturing methamphetamine, with the two other charges and a separate retail theft case being dismissed. The court sentenced Appellant to one and one-half years’ initial confinement and three years’ extended supervision. The court denied Appellant’s motion for modification of her sentence.

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).

A sentence must take into account the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant. *Gallion*, 270 Wis. 2d 535, ¶44. The weight given to each particular factor is “particularly within the wide discretion of the sentencing judge.”

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

State v. Grady, 2007 WI 81, ¶31, 302 Wis. 2d 80, 734 N.W.2d 364 (citation omitted). Probation should be considered as a “first alternative,” unless “confinement is necessary to protect the public, the offender needs correctional treatment available only in confinement, or it would unduly depreciate the seriousness of the offense.” *Gallion*, 270 Wis. 2d 535, ¶44.

The circuit court did not erroneously exercise its sentencing discretion. 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. The circuit court focused on the seriousness of the offense, including the manufacture of dangerous drugs in her home; the dissemination of those drugs into the community; and the exposure of the children in her home to the hazardous chemicals used to manufacture the drugs. The court also considered mitigating circumstances, explaining that Appellant is “a good person,” “has done some positive things,” and her willingness to accept responsibility and be held accountable is worthy of consideration. The court concluded, however, that Appellant required “some type of structured setting, a regimen of treatment that I believe can most effectively be provided in a confined setting.”

Appellant’s argument that the circuit court’s sentence was “mechanistic” is without support. The circuit court considered probation and explained clearly on the record why it felt probation was not appropriate under the circumstances. Appellant argues that she was “a vulnerable accomplice” and that her “home was invaded, taken over and used by [a co-actor] who used [Appellant’s] vulnerabilities against her.” The court considered Appellant’s “vulnerabilities” in fashioning her sentence and opined that she was in need of the structure that confinement would provide due to the “depth of her addiction, the depth of her problems, [and] her other mental health issues that have compromised responsible thinking [and] provoked and invited vulnerability to participate in this type of behavior.” The fact that Appellant disagrees

with the circuit court's sentencing decision does not mean the circuit court erroneously exercised its sentencing discretion.

IT IS ORDERED that the judgment and the 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