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**DISTRICT I**

April 19, 2018

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

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2017AP2144-CR            State of Wisconsin v. Demario Easley  
(L.C. # 2014CF2707)

Before Brennan, P.J., Kessler and Dugan, 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).**

Demario Marshall Easley appeals the judgment convicting him of the following charges: first-degree reckless homicide by use of a dangerous weapon; being a felon in possession of a firearm; and felony bail jumping. *See* WIS. STAT. §§ 940.02(1), 939.63(1)(b), 941.29(2)(a),

946.49(1)(b) (2013-14).<sup>1</sup> He also appeals the order denying his postconviction motion. Easley contends that the trial court erroneously exercised its discretion when it ordered him to serve three consecutive sentences. 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. We affirm.

### ***Background***

The charges against Easley stemmed from allegations that he shot and killed a man at a gas station in the middle of the day. According to the amended criminal complaint, he did so while out on bail and despite being prohibited from possessing firearms due to a prior felony conviction. After a five-day trial, a jury found him guilty of first-degree reckless homicide by use of a dangerous weapon; being a felon in possession of a firearm; and felony bail jumping.

On the charge of first-degree reckless homicide by use of a dangerous weapon, the trial court sentenced him to thirty-five years of initial confinement and twelve years of extended supervision. On the charge of being a felon in possession of a firearm, the trial court sentenced him to five years of initial confinement and five years of extended supervision, to run consecutively. On the charge of felony bail jumping, the trial court sentenced him to three years of initial confinement and three years of extended supervision, also to run consecutively. The effect of the sentences is that Easley will serve forty-three years of initial confinement followed by twenty years of extended supervision.

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

Easley, citing *State v. Hall*, 2002 WI App 108, 255 Wis. 2d 662, 648 N.W.2d 41, filed a postconviction motion arguing that the trial court erroneously exercised its discretion when it imposed consecutive sentences. He asserted the trial court should have imposed concurrent sentences because the crimes all stemmed from the same event. The postconviction court denied the motion. Easley now appeals.

### *Discussion*

Our standard of review when reviewing a criminal sentencing is whether or not the trial court erroneously exercised its discretion. See *State v. Harris*, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. Indeed, there is a strong policy against an appellate court interfering with a trial court's sentencing determination and, an appellate court must presume that the trial court acted reasonably. See *id.*

WISCONSIN STAT. § 973.15(2)(a) provides: “the court may impose as many sentences as there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously.” “The decision whether consecutive sentences are necessary is one within the trial court's discretion[.]” *State v. LaTender*, 86 Wis. 2d 410, 432, 273 N.W.2d 260 (1979).

Easley continues to rely on *Hall* as support for his claim that the trial court erroneously exercised its discretion when it imposed consecutive sentences. He cites language in *Hall* referring to the ABA Standards for Criminal Justice Sentencing, which provide: “[W]here the separate offenses are not merged for sentencing, a sentencing court should consider imposition of sanctions of a type and level of severity that take into account the connections between the separate offenses and, in imposing sanctions of total confinement, ordinarily should designate

them to be served concurrently.” *Hall*, 255 Wis. 2d 662, ¶14 (citation omitted; brackets in *Hall*). According to Easley, “a concurrent sentence was applicable and required. No explanation to the contrary would have sufficed.” Easley is wrong.

Although the *Hall* court stated that the sentencing in that case “flies in the face of the ABA Standards,” *id.*, 255 Wis. 2d 662, ¶13, it did not explicitly adopt the ABA Standards, or require their application in all Wisconsin cases, *see id.*, ¶¶11-14. *See also State v. Berggren*, 2009 WI App 82, ¶45, 320 Wis. 2d 209, 769 N.W.2d 110 (noting that “*Hall* did not ... establish a new procedural requirement at sentencing that the trial court state separately why it chose a consecutive rather than a concurrent sentence”). To the contrary, Wisconsin subscribes to a more flexible approach to sentencing. *State v. Paske*, 163 Wis. 2d 52, 66-67, 471 N.W.2d 55 (1991) (“This court has repeatedly refused to accept guidelines or limitations on consecutive sentencing.”). The dispositive question remains whether or not the trial court erroneously exercised its sentencing discretion. *See Berggren*, 320 Wis. 2d 209, ¶46 (explaining that “[a] trial court properly exercises its discretion in imposing consecutive ... sentences by considering the same factors as it applies in determining sentence length”).

Here, the trial court made the necessary record, unlike in *Hall*, where the trial court did not properly explain why it ordered the defendant’s sentences to run consecutively or otherwise relate the sentences to the sentencing objectives. *See id.*, 255 Wis. 2d 662, ¶¶12, 15, 17. The trial court made clear that it considered that the homicide was facilitated by Easley’s possession of a firearm, which he was prohibited from having, and further noted that Easley was out on bail at the time. The trial court concluded: “I think that as a matter of protecting the public from this increasingly violent ... criminal conduct of Mr. Easley, I think it is important that his freedom be forfeited for a very significant portion of his life.” It went on to order that Easley’s sentences be

served consecutively. Easley's claim that "[t]he trial court at sentencing ... never provided any explanation for the consecutive nature of the sentences" is belied by the record.

The trial court properly exercised its sentencing discretion; consequently, the postconviction court properly denied Easley's motion for resentencing.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*