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**DISTRICT II**

June 20, 2018

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

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2017AP1014-CR                      State of Wisconsin v. Michael D. Sims (L.C. # 2015CF254)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, 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).**

Michael D. Sims appeals from an order denying his motion for sentence modification. He contends that the circuit court erroneously exercised its discretion at 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).<sup>1</sup> We affirm the order of the circuit court.

Sims was convicted following a guilty plea to delivering cocaine, one gram or less, as a party to a crime, and as a second or subsequent offense. The charge stemmed from his sale of cocaine to a confidential informant. Several other drug-related charges were dismissed and read-in. The circuit court sentenced Sims to ten years of imprisonment, consisting of five years of initial confinement and five years of extended supervision.

Sims filed a motion for sentence modification, arguing that the circuit court erroneously exercised its discretion by not mentioning his impaired health as a mitigating factor.<sup>2</sup> As noted in the presentence investigation report, Sims suffers from a host of maladies, including “ulcerative colitis, recurrent gastrointestinal problems, high cholesterol and blood pressure, and problems associated with his heart, liver, and kidneys.” Both Sims and his counsel discussed some of those health problems at sentencing, as well as a scheduled surgery to remove Sims’ colon.

After a hearing on the matter, the circuit court denied Sims’ motion. The court indicated that it “was aware of basically all of the information, or the vast majority of the information concerning the nature and extent of the defendant’s medical issues at the time it imposed sentence.” It further indicated that it did not mention Sims’ health problems because it did not

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

<sup>2</sup> Sims also alleged the existence of a new factor. He does not renew that claim on appeal.

believe they were highly relevant to its sentence given other factors it relied upon. Finally, the court concluded that it did not otherwise erroneously exercise its discretion. This appeal follows.

Sentencing is left to 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. We afford a strong presumption of reasonability to the circuit court's sentencing determination because that court is best suited to consider the relevant factors and demeanor of the defendant. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76. Our analysis includes consideration of the postconviction hearing because a circuit court has an additional opportunity there to explain its sentence. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

The primary sentencing factors that a circuit court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Ziegler*, 289 Wis. 2d 594, ¶23. The court may consider other factors as well, including (1) the defendant's criminal record; (2) the defendant's history of undesirable behavior; (3) the defendant's personality, character, and social traits; (4) the results of the presentence investigation report; (5) the aggravated nature of the crime; (6) the defendant's degree of culpability; (7) the defendant's demeanor; (8) the defendant's age, educational background, and employment record; (9) the defendant's remorse and cooperativeness; (10) the need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention. *Id.*

The circuit court need not enumerate all of the sentencing factors that might have been considered in reaching its decision. *State v. Grady*, 2007 WI 81, ¶41, 302 Wis. 2d 80, 734

N.W.2d 364. “It remains within the discretion of the circuit court to discuss only those factors it believes are relevant.” *Id.* (citation and internal quotation marks omitted).

Here, the circuit court addressed the sentencing factors that it was required to consider, *i.e.*, the gravity of the offense, Sims’ character, and the need to protect the public. Additionally, it discussed several other permissible factors, including Sims’ criminal record, personality, employment record, and lack of remorse.

Admittedly, the circuit court did not mention Sims’ impaired health in its sentencing remarks. However, it was not required to do so. *Id.* As the court explained at the postconviction hearing, it was aware of Sims’ health problems but did not believe they were highly relevant to its sentence given other factors it relied upon. On this record, we perceive no erroneous exercise of discretion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*