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DISTRICT I

July 11, 2018

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

2017AP1466

State of Wisconsin v. Dion M. Echols (L.C. # 2007CF3558)

Before Brennan, Brash 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).

Dion M. Echols appeals the circuit court's judgment resentencing him for crimes he committed in 2007 and the circuit court's order denying his motion to modify his sentence. Echols argues that he deserves a downward sentence modification for his guilty plea and acceptance of responsibility. We affirm.

Echols attempted to kill his girlfriend's younger sister and her boyfriend, who were seventeen and eighteen years old at the time, while they were babysitting for Echols's girlfriend.

He forced his way into the house at gunpoint, demanded money, and made them engage in sexual activity. He then ordered the couple into the boyfriend's car, drove them to an alley, and shot them each in the head two times.

After a trial to the court, Echols was convicted of two counts of attempted first-degree intentional homicide and one count of first-degree sexual assault. The circuit court sentenced him to an aggregate term of fifty years of initial confinement and fifteen years of extended supervision; for each count of attempted first-degree intentional homicide, the court imposed twenty years of initial confinement and five years of extended supervision, to be served consecutively; for first-degree sexual assault, the court imposed ten years of initial confinement and five years of extended supervision, to be served consecutively.

In 2014, Echols moved for postconviction relief, arguing that he received ineffective assistance of trial counsel because his trial counsel did not tell him that the State offered to dismiss the sexual assault charge in exchange for a guilty plea to the two attempted first-degree intentional homicide charges. The State agreed that he was entitled to relief. The circuit court dismissed the sexual assault conviction and resentenced him, imposing the same sentence as before for each count of attempted first-degree intentional homicide, twenty years of initial confinement and five years of extended supervision, to be served consecutively. Because the sexual assault conviction was vacated, Echols's aggregate sentence was reduced by ten years of initial incarceration and five years of extended supervision. After resentencing, Echols moved the circuit court to modify the sentence. The circuit court denied the motion.

On appeal, Echols argues that the circuit court misused its discretion because it did not reduce his sentence on each count of attempted first-degree intentional homicide, as compared to

the original sentencing. He contends that the circuit court should have given him credit for accepting responsibility for his actions by pleading guilty the second time around because the circuit court considered his failure to take responsibility as an aggravating factor at the previous sentencing hearing.

We will affirm a circuit court's sentencing decision unless it erroneously exercises its discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A circuit court properly exercises its discretion when it applies the appropriate legal standards to “facts that are of record or that are reasonably derived by inference from the record” and, using a demonstrated rational process, reaches a reasonable conclusion. *Id.*, ¶19 (citation omitted). “Circuit courts must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public.” *State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. Courts may also consider a host of additional related factors, such as the defendant's criminal record, the defendant's culpability, and the defendant's remorse. *Id.* “[S]entencing courts must individualize the sentence to the defendant based on the facts of the case by identifying the most relevant factors and explaining how the sentence imposed furthers the sentencing objectives.” *Id.*, ¶29.

The circuit court properly exercised its discretion when it resentenced Echols. The circuit court considered the three primary sentencing factors: the gravity of the offense, the character of the defendant, and the need to protect the public. The circuit court also considered the fact that Echols had positively changed since the original sentencing and had accepted responsibility for what he had done. The circuit court said that he had matured in prison and had become genuinely remorseful for his actions. Even so, the circuit court concluded that these factors did not offset the exceptionally horrendous nature of Echols's crimes and their continuing negative

impact on the victims. The circuit court concluded that the same sentence it imposed in 2008 for the attempted first-degree intentional homicide convictions was necessary to punish and deter Echols, and to protect the community because Echols's "actions were so severe and the impact was so devastating to the victims that the court could not and cannot sanction any lesser sentence as an appropriate disposition for these crimes."

In sum, then, the circuit court did what it was supposed to do. It considered the factors that it was required to consider and, applying the discretion that it is accorded when making sentencing decisions, concluded that Echols deserved twenty-five years of imprisonment for each conviction. There was no erroneous exercise of discretion.

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21 (2015-16).

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

Sheila T. Reiff
Clerk of Court of Appeals