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DISTRICT I/IV

September 24, 2018

To:

Hon. Timothy G. Dugan
Circuit Court Judge
Br. 10
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Hon. Jeffrey A. Wagner
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You are hereby notified that the Court has entered the following opinion and order:

2017AP2455-CR	State v. Jacob Leszczynski (L.C. #2014CF4889)
2017AP2456-CR	State v. Jacob Leszczynski (L.C. #2015CF993)

Before Sherman, Blanchard and Fitzpatrick, 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).

Jacob Leszczynski appeals judgments of conviction and circuit court orders denying postconviction relief.¹ Leszczynski challenges his sentence, arguing that the circuit court

¹ Judge Timothy G. Dugan presided over plea proceedings and sentencing. Judge Jeffrey A. Wagner entered the orders denying postconviction relief.

misused its sentencing discretion by failing to acknowledge and apply the requirement that the court impose the minimum amount of custody consistent with the purposes of 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(1) (2015-16).² We summarily affirm.

Leszczynski pled guilty to and was convicted of one count of conspiracy to possess heroin with intent to deliver an amount of more than 10 grams but not more than 50 grams, and one count of first-degree reckless homicide by delivery of a controlled substance (the “Len Bias” law). According to the homicide complaint allegations, which Leszczynski admitted during his plea colloquy, Leszczynski supplied heroin to an individual who overdosed in Leszczynski’s presence and died. The circuit court imposed consecutive sentences consisting of 5 years of initial confinement plus 5 years of extended supervision on the possession-with-intent-to-deliver count, and 20 years of initial confinement plus 10 years of extended supervision on the homicide count, for a total aggregate sentence of 40 years.

Our review of sentencing is limited to determining if the circuit court erroneously exercised its discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. To properly exercise this discretion, the sentencing court must set forth a rational and explainable basis for the sentence, considering the facts in light of relevant sentencing factors and objectives. *Id.*, ¶¶39-43. As part of this process, the court must impose a sentence that “call[s] for the minimum amount of custody or confinement which is consistent with the

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.”
Id., ¶¶23, 44 (quoting *McCleary v. State*, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971)).

As noted, Leszczynski argues that the circuit court failed to acknowledge and apply this “minimum amount of custody or confinement” requirement. In making this argument, Leszczynski seemingly relies on the proposition that, under *Gallion* and *McCleary*, the circuit court must expressly state the requirement on the record. However, neither *Gallion* nor *McCleary* contains this proposition, and Leszczynski points to no other authority containing the proposition. To the contrary, as Leszczynski acknowledges in briefing, *Gallion* states that the circuit court need not recite “magic words” in order to demonstrate a proper exercise of sentencing discretion. See *Gallion*, 270 Wis. 2d 535, ¶49.

Here, the circuit court’s sentencing decision demonstrates the court’s determination that the amount of custody imposed was the minimum consistent with the protection of the public, the gravity of the offense, and Leszczynski’s rehabilitative needs. The court referenced these and other sentencing factors, and explained why the facts of this case, including a number of aggravating circumstances, justified Leszczynski’s sentence. For example, the court noted that Leszczynski had the opportunity to save the victim’s life by promptly calling 911, but that Leszczynski instead delayed in calling 911 and invented a cover story he told police in an attempt to avoid responsibility. The court also referred to Leszczynski’s tendency to manipulate and prey on others, including by prostituting at least one girlfriend for drug money; to Leszczynski’s lack of remorse; and to information indicating that Leszczynski used money taken from the dead victim to buy drugs. In sum, the court’s sentencing decision shows that the court rationally explained its view that the sentence imposed was the minimum consistent with the sentencing objectives.

Therefore,

IT IS ORDERED that the judgments of conviction and the circuit court orders denying postconviction relief are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals