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DISTRICT III

November 6, 2018

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

2018AP122-CR

State of Wisconsin v. Cory J. Hendricks (L. C. No. 2014CF508)

Before Stark, P.J., Hruz and Seidl, 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).

Cory Hendricks appeals a criminal judgment of conviction and an order denying his postconviction motion for resentencing. After reviewing the record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm for the reasons discussed below.

The State initially charged Hendricks with aggravated battery, second-degree reckless injury, and disorderly conduct based upon allegations that Hendricks and another man randomly attacked and beat a complete stranger as he was leaving a bar, without provocation. The victim suffered a shattered cornea, a detached retina, and permanent loss of vision in his right eye as a result of the assault. Hendricks eventually agreed to enter a no-contest plea to the charge of second-degree reckless injury, as party to a crime, in exchange for the State's dismissal and reading in of the other two charges and its agreement not to file additional charges of obstruction or intimidation of a witness.

The circuit court ordered a presentence investigation (PSI), which recommended a sentence consisting of three or four years of initial confinement and three or four years of extended supervision. The State recommended a prison sentence, without specifying a length. Hendricks' counsel acknowledged that this was "a prison case," and he recommended three years of initial confinement and four years of extended supervision, consistent with the PSI. The victim filed an impact statement stating he had lost his livelihood as a truck driver due to his loss of vision, and he had been living on his savings since the attack. The victim also reported having flashbacks, difficulty concentrating, fear that Hendricks or his friends might come after him again, and loss of his social life. The victim asked the court to put Hendricks away "for a long time" to save someone else from having his life ruined by Hendricks.

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

After considering the PSI, the arguments of the parties, and the victim impact statement, the circuit court sentenced Hendricks to six years of initial confinement to be followed by four years of extended supervision. Hendricks filed a postconviction motion seeking resentencing on the grounds that the circuit court erroneously exercised its discretion “by imposing an excessive sentence where the record shows that the court failed to adequately articulate why, and which, of the individual factors involved in this matter required a sentence that exceeded both the recommendations of the parties and the [PSI].” The circuit court denied the motion, and Hendricks now appeals, raising the same issue before this court.

As a threshold matter, we reject the premise that a circuit court is required to explain why it failed to follow any particular recommendation. Rather, when imposing a sentence, the circuit court should discuss relevant factors such as the severity of the offense and character of the offender and then relate those factors to identified sentencing objectives, such as the need for punishment, protection of the public, general deterrence, rehabilitation, restitution, or restorative justice. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. In other words, the court needs to explain why it imposed the sentence it did; not why it did not impose some other sentence. Furthermore, while the court should provide an explanation for the general range of the sentence imposed, it need not employ “mathematical precision” detailing why it imposed a particular number of years. *See State v. Klubertanz*, 2006 WI App 71, ¶¶17, 22, 291 Wis. 2d 751, 713 N.W.2d 116.

Here, the record demonstrates that the circuit court properly exercised its discretion by discussing proper factors and applying them to the facts of this case. The court began its discussion at the sentencing hearing by noting that the crime was a serious Class F felony that involved great bodily harm to the victim. The court next noted that it was concerned about

Hendricks' criminal history, citing the number of his prior convictions, the length of time they spanned, and his prior revocations from both probation and extended supervision. The court observed that much of Hendricks' criminal behavior seemed to be alcohol related, but it expressed skepticism at Hendricks' professed goal of never drinking again. The court also acknowledged that Hendricks had suffered multiple tragedies in his life, but it pointed out that he had to bear the responsibility for his actions. The court concluded that one of the most important factors in this case was the need to protect the public. It noted the PSI calculated a high risk of recidivism, and Hendricks' vicious attack on the victim was for no logical reason, was "frightening," and presented a clear and present danger to the community. Taken together, the circuit court's comments amply explained why it determined that a substantial prison sentence was warranted.

Moreover, the sentence imposed was in no way "excessive." The components of the bifurcated sentence were well within the maximum penalties allowed by law. *See* WIS. STAT. § 973.01(2)(b)6m., (d)4. (providing maximum terms of seven-and-one-half years of initial confinement and five years of extended supervision for a Class F felony). The total sentence was not so disproportionate to the offense as to shock the conscience, particularly taking into account the crime's severe impact on the victim. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. We conclude the circuit court properly denied Hendricks' motion for resentencing.

IT IS ORDERED that the judgment and order are summarily affirmed under 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