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DISTRICT II

December 26, 2018

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

2018AP397-CR State of Wisconsin v. Lance A. Keota (L.C. #2015CF236)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Lance A. Keota appeals from a judgment of conviction and an order of the circuit court denying his postconviction motion for a new trial or sentencing relief. 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).[1] We affirm.

In February 2015, Keota and Jason Barnhill robbed a bank. Keota was charged with one felony count of robbery of a financial institution, WIS. STAT. § 943.87. Barnhill confessed to his participation in the crime and later entered a plea agreement. Pursuant to that agreement, Barnhill testified against Keota at the latter's trial, detailing Keota's involvement in the planning and execution of the robbery. He also testified to physical evidence introduced at trial that implicated Keota. In addition, three women testified for the State as to their knowledge of Keota's involvement in the robbery: Barnhill's former girlfriend, Barnhill's former neighbor, and Keota's former girlfriend. The circuit court provided the pattern jury instruction on accomplice testimony with regard to Barnhill's testimony only.[2] The jury found Keota guilty of the charge.

Thereafter, the circuit court sentenced Keota to eight years of initial confinement and ten years of extended supervision. Keota moved for postconviction relief, which was denied after argument was heard. He now appeals.

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[1] All references to the Wisconsin Statutes are to the 2015-16 version.

[2] The pattern instruction reads:

> You have heard testimony from (name accomplice) who stated that (he) (she) was involved in the crime charged against the defendant. You should consider this testimony with caution and great care, giving it the weight you believe it is entitled to receive. You should not base a verdict of guilty upon it alone, unless after consideration of all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty.

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Keota first argues that the circuit court erred by failing to include the three female witnesses within the jury instruction on accomplice testimony. We start by recognizing that Keota did not object to the instruction he now challenges. "Failure to object at the [instructions] conference constitutes a waiver of any error in the proposed instructions or verdict." WIS. STAT. § 805.13(3). When an alleged instructional error has been forfeited, this court will not review the issue. ***Best Price Plumbing, Inc. v. Erie Ins. Exch.***, 2012 WI 44, ¶¶39, 41, 340 Wis. 2d 307, 814 N.W.2d 419 (citing § 805.13(3)). Notwithstanding, Keota argues that this court should review the error alleged here because it was plain. To the contrary, the plain-error doctrine does not cure forfeiture of instructional errors. ***State v. Schumacher***, 144 Wis. 2d 388, 402, 424 N.W.2d 672 (1988) (citing § 805.13(3)). Although this court can review an unobjected-to instructional error for purposes of discretionary reversal under WIS. STAT. § 752.35, the record shows us no reason to exercise that authority here. ***Vollmer v. Luety***, 156 Wis. 2d 1, 17, 22, 456 N.W.2d 797 (1990).

Keota next argues that the circuit court erred in imposing his sentence because it failed to account for relevant sentencing factors and failed to explain the bases for its decision. Among the absent factors, he asserts that the court could not consider his background because it failed to order a presentence investigation.

A sentencing court has broad discretion to consider and weigh relevant sentencing factors. ***State v. Harris***, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. The court need not address all relevant sentencing factors on the record, but must identify those most relevant and explain how the sentence imposed furthers its sentencing objectives. ***Id.***, ¶¶28-29. Our review of a sentencing decision is limited to determining whether the sentence is based on or in actual reliance on clearly irrelevant or improper factors. ***Id.***, ¶30.

The record shows the circuit court based its sentencing decision on the seriousness of Keota's offense and numerous factors that contributed to his character as a ready, willing and able participant in that crime and the danger he posed to the public given his decision to commit an armed robbery while on extended supervision for an earlier burglary conviction. While presentence investigation results may be considered at sentencing, we find no error in the circuit court's discretionary decision not to order an investigation after Keota stated he was not requesting one at the end of trial. *See* WIS. STAT. § 972.15(1).

Finally, Keota challenges his sentence by contrasting its duration with the lesser sentence imposed on Barnhill, arguing that this disparity has no reasonable basis other than to punish him for exercising his constitutional right to a jury trial. Without more, this argument has no merit. ***Drinkwater v. State***, 73 Wis. 2d 674, 678-79, 245 N.W.2d 664 (1976) ("[A] mere disparity between a sentence imposed on a defendant who pleads guilty and on another who is convicted after trial is not enough to establish that the latter has been punished for exercising a constitutional right."). Moreover, in sentencing Keota, the circuit court clearly stated that it was *not* punishing him for exercising his constitutional right before explaining the basis for his greater sentence.

In total, Keota's sentence was based on proper consideration of appropriate factors that were adequately set forth on the record. Accordingly, we conclude that it was a reasonable exercise of the sentencing court's discretion.[3]

Upon the foregoing reasons,

IT IS ORDERED that the judgment and the order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals

[3] Despite receiving a sentence twenty-two years less than the statutory maximum, Keota also asserts that his sentence was unduly harsh and unconscionable. WIS. STAT. §§ 943.87, 939.50(3)(c). Because this assertion carries neither reasoned argument nor citation of any kind, we need not address it further. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (rejecting undeveloped arguments).