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**DISTRICT II**

January 9, 2019

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

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2018AP429-CR

State of Wisconsin v. Salmineo A. Webster (L.C. #2016CF55)

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

Salmineo Webster appeals from a judgment of conviction and an order denying his motion for postconviction 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).<sup>1</sup> We affirm.

Webster pled guilty to one count of manufacturing/delivering heroin, one count of possessing heroin with the intent to deliver, and one count of possessing cocaine with the intent to deliver, with additional drug-related charges dismissed and read in. The circuit court sentenced him to ten years of initial confinement followed by ten years of extended supervision, as well as probation time. Webster moved for postconviction relief, which motion the court denied.

Webster asserts the circuit court erroneously exercised its discretion in sentencing him because “[t]he only relevant sentencing factor the court gave any consideration to was the goal of general deterrence.” Webster is incorrect.

Our supreme court has explained that in sentencing a defendant, a circuit court must consider the defendant’s character, the gravity and nature of the offense, and the need to protect the public. *See State v. Spears*, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). Here, the court considered all three.

Considering Webster’s character, the circuit court concluded Webster had “been a victim in [his] own life,” an apparent reference to an earlier comment by Webster’s counsel that Webster’s “own mother was a drug addict.” The court added that despite Webster “s[eeing] for [himself] what drugs do to people,” he nonetheless made “the choice that [he] made.” The court

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

further noted Webster had a “history of conviction for delivery of dangerous drugs” and that Webster made the choice to sell drugs “in spite of the fact that [he] had employment” and had “done much better than most of the people who come here like this.” The court told Webster that he could “be proud” of having done well, “but in spite of that, the greed overwhelmed you, too, and ... you knew how dangerous this was.”

The circuit court also considered the gravity and nature of Webster’s offenses of selling heroin and cocaine within the community, referring to the “frightening consequences of drug use” and that it is “frightening how many young people are getting involved with heroin,” expressing its concern that even “intelligent people are getting involved with heroin now. It’s too readily available and too inexpensive.” Related to protecting the public from other drug dealers, and obviously Webster himself, all of whom the court believed would be more likely to be deterred from selling drugs if drug dealers like Webster received tough sentences, the court expressed, “[S]ome of them will just get out of the business. That means less children will start using heroin. That means more people’s lives will be spared from what has become a frightening death toll in this community and in this country.” The court added that despite its “heart go[ing] out to [Webster] for [his] youth, we want our generation now to have a better life in a better world than what [he] lived” and that Webster’s sentence needed to be “a resonant alert to everybody involved to try to awaken them that there is a better way.” The court expressed its “hope that [Webster will] follow [his] better instinct and ... won’t be in a place like this again, but the choice will be [his].” The court appropriately considered the relevant sentencing factors.

Webster complains that the circuit court placed too much emphasis upon the goal of general deterrence of drug dealers as a means of protecting the community. The court, however, “has ‘wide discretion in determining what factors are relevant’ and what weight to give to each

factor.” *State v. Williams*, 2018 WI 59, ¶47, 381 Wis. 2d 661, 912 N.W.2d 373 (quoting *State v. Gallion*, 2004 WI 42, ¶68, 270 Wis. 2d 535, 678 N.W.2d 197). “In some cases, punishment and protection of the community may be the dominant objectives. In others, rehabilitation of the defendant and victim restitution may be of greater import. Still others may have deterrence or a restorative justice approach as a primary objective.” *Gallion*, 270 Wis. 2d 535, ¶41. Webster has not shown that the court erroneously exercised its discretion when it sentenced Webster with deterrence and protection of the community as the court’s “dominant objectives.”

Webster also claims the circuit court erred in sentencing him because “it speculated without any support in the record that punishing Mr. Webster harshly would save children from drug addiction.” He asserts “[t]he circuit court was able to point to no actual support for its position” that harsher sentences for drug dealers would lead to less illegal drugs on the streets and safer communities. Webster is effectively arguing that the court relied upon inaccurate information in sentencing him, but he misunderstands the burden on such a claim. To prevail on his sentence challenge, *he* must demonstrate, by clear and convincing evidence, that the court actually relied upon information that was inaccurate. *See State v. Groth*, 2002 WI App 299, ¶22, 258 Wis. 2d 889, 655 N.W.2d 163, *overruled on other grounds by State v. Tiepelman*, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1. He has failed to show this.

Webster complains of comments the circuit court made at sentencing related to drug policies in Singapore. The court commented that “[c]rime [in Singapore] was rampant and drug sales were a crushing burden on the population” but that the situation turned around completely after Singapore adopted very harsh penalties for drug dealers. The court also referenced testimony by a law enforcement witness in a case before the court years earlier, in which the witness had indicated that “around the 1990s” “you could not buy heroin in Kenosha. The sales

had dried up because the dealers who were on the street who got caught were being treated very harshly, received very long sentences, and nobody wanted to get into that business.” Despite his complaint about the court’s comments, Webster does not claim that the court’s references to Singapore or the situation in Kenosha in the 1990s were inaccurate in any way.

Related to these references, the court expressed its general belief that lengthy prison sentences for drug dealing would have a general deterrent effect—“[t]he word does get out. Your friends, your acquaintances, people who have done business with you will see what happened to you today, and they will make their own economic choice about what kind of a risk they want to take on and what the potential reward is.” While Webster criticizes as “overly simplistic” the circuit court’s belief that harsh sentences for drug dealers are more likely to deter other would-be drug dealers than soft sentences would, he fails to show by clear and convincing evidence that the court’s belief actually is factually incorrect. The closest attempt Webster makes is pointing to a study he claims indicates that “despite increased state and federal penalties ... the average inflation-adjusted and purity-adjusted price of heroin *decreased* by 81% between 1990 and 2007.” But this does not prove false the court’s belief that harsh sentencing of drug dealers will make others think twice before dealing drugs, which was the court’s overriding point when discussing the deterrence potential of a harsh sentence. As the court stated, the “economics” of drug dealing “isn’t just about money, it’s about choices, and people when they make decisions—you, me, everybody—decides about what reward can I accomplish through a certain choice, and what are the risks? What is the downside?” The court added that “when you make it not that big of a deal if somebody gets caught and convicted of something like this, then it is an incentive for people to do more of that kind of conduct.” The court’s overriding point was that

[a]ggressive enforcement by the police and stern sentencing reduce drug trafficking. The dealers don't want to have the risk of ugly punishments, of getting caught and getting a very lengthy prison sentence, and so they just either stop altogether or they go underground so it becomes harder to get, ... less people get involved in it, less people get addicted.

Webster has failed to show by clear and convincing evidence that the court's belief was actually inaccurate, and with that his position that he was sentenced based upon inaccurate information fails.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

*See* 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*