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DISTRICT II

March 6, 2019

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

2018AP1141-CR State of Wisconsin v. Jubilee S. Braithwaite (L.C. #2016CF1090)

Before Neubauer, C.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).

Jubilee S. Braithwaite appeals from a judgment of conviction and an order denying his postconviction motion. He contends that his sentence was unduly harsh. 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 (2017-18).¹ We affirm.

Braithwaite was convicted following guilty pleas to three counts of robbery of a financial institution with use of a dangerous weapon. The charges stemmed from three separate bank robberies that Braithwaite committed one afternoon in Kenosha. For his actions, the circuit court imposed consecutive sentences of seven years of initial confinement and six years of extended supervision on each count.

Braithwaite subsequently filed a motion for postconviction relief, arguing that his sentence was unduly harsh. After a hearing on the matter, the circuit court denied the motion. This appeal follows.

A circuit court’s exercise of its sentencing discretion is presumptively reasonable, and our review is limited to determining whether the court erroneously exercised its discretion. *State v. Harris*, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. The defendant bears a heavy burden of showing that the court erroneously exercised its discretion. *Id.*

A defendant challenging a sentence as an erroneous exercise of discretion on the ground that it was unduly harsh must show that the sentence was “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). A sentence well within the statutory

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

maximum is presumed not to be unduly harsh. See *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

On appeal, Braithwaite renews his argument that his sentence was unduly harsh. Citing similarities in time, place, and modus operandi,² he submits that his robberies were part of one criminal act and therefore warranted only one punishment. He also relies upon WIS. STAT. § 971.12 and cases applying this joinder statute to suggest that his robberies should be treated as one for sentencing because they were part of a common scheme or plan and of the same or similar character.

We are not persuaded by Braithwaite's arguments. Similarities in time, place, and modus operandi do not condense three separate crimes into one. Likewise, the fact that multiple crimes can be joined for prosecution does not mean that they should be treated as one for purposes of sentencing. Again, it is undisputed that Braithwaite committed three separate bank robberies. The circuit court appropriately sentenced him for each one, explaining its objectives and addressing the primary sentencing factors. The court's total sentence was well within the statutory maximum and therefore presumed not to be unduly harsh. *Grindemann*, 255 Wis. 2d 632, ¶¶31-32.³ Braithwaite has failed to meet his heavy burden of showing otherwise.

Upon the foregoing reasons,

² The robberies occurred within 34 minutes and 4.6 miles of one another. In each one, Braithwaite dressed in a disguise, demanded money, and threatened the use of a gun.

³ Braithwaite's total sentence of 39 years was less than one-third of the 135-year statutory maximum.

IT IS ORDERED that the judgment and 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