



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

April 9, 2019

To:

Hon. Frederick C. Rosa
Circuit Court Judge
Br. 35
901 N. 9th St., Rm. 632
Milwaukee, WI 53233

Hon. Carolina Stark
Circuit Court Judge
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Carly Cusack
Asst. State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4116

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Daniel J. O'Brien
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2018AP1532-CR State of Wisconsin v. Romain Antonio Tolbert
(L.C. # 2015CF3635)

Before Kloppenburg, Brash and Dugan, 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).

Romain Antonio Tolbert appeals a judgment, entered on his guilty pleas, convicting him on seven drug-related felony offenses. He also appeals an order denying his motion for postconviction relief. Tolbert argues that a condition of extended supervision, that he not carry more than \$200 in cash, is unreasonable. 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 The judgment and order are summarily affirmed.

In August 2015, Tolbert was charged with three counts of manufacture or delivery of three grams or less of heroin, three counts of manufacture or delivery of one gram or less of cocaine, and one count of possession with intent to deliver between five and fifteen grams of cocaine, all as a repeater and all as a second or subsequent offense. He agreed to plead guilty to the seven charges in exchange for the State’s agreement to dismiss all of the penalty enhancers.

Tolbert’s pleas were accepted, and he was sentenced to four years of initial confinement and five years of extended supervision on each count, to be served concurrently.² As conditions of Tolbert’s extended supervision, the sentencing court ordered, among other things:

You may not possess more than \$200 in cash at one time, bills or coins; you may not possess more than one cellphone at one time or have more than one phone number registered to your name at a time. And those last three conditions related to cash and phones are because oftentimes those are tools of the drug trade.

Tolbert filed a postconviction motion seeking to vacate the cash condition.³ He argued that the condition was unreasonable because it “will ultimately impose greater challenges than

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

² Tolbert was sentenced by the Honorable Carolina Stark. We will refer to her as the “sentencing court.”

³ The postconviction motion also sought to withdraw Tolbert’s pleas because of the multiple DNA surcharges. That part of the motion was denied in a separate order based on our holding in *State v. Freiboth*, 2018 WI App 46, ¶12, 383 Wis. 2d 733, 916 N.W.2d 643. Tolbert does not challenge the order denying that part of the motion.

The orders denying the postconviction motion were entered by the Honorable Frederick C. Rosa. We will refer to him as the “circuit court.”

the [sentencing] court anticipated” and because if the sentencing court’s sentencing objective was to deter Tolbert from future drug-dealing, “that goal is achieved through the other conditions of supervision that Mr. Tolbert acknowledged are appropriate.” Tolbert further asserted that the cash condition “creates a burdensome restriction on Mr. Tolbert’s positive behaviors that would frustrate his rehabilitation and is unnecessary in light of his other conditions of extended supervision.”

The circuit court noted that the sentencing court imposed the cash condition because “large amounts of cash currency were ‘oftentimes ... tools of the drug trade.’” The circuit court additionally noted that “[t]he sentencing court indicated that its main goal was to protect the community from further drug dealing by the defendant, and that is clearly the purpose of the condition.” Further, the circuit court believed the condition was reasonable because of Tolbert’s prior drug history—he had committed these drug offenses when he was on extended supervision for another drug offense, his activity had escalated to include heroin, and his record from 2000 to 2016 “was terrible, much of it involving drugs, which he was dealing as a means of support.” Thus, the circuit court denied the motion. Tolbert appeals.

A sentencing court is authorized to “impose conditions upon the term of extended supervision.” WIS. STAT. § 973.01(5) (2015-16). “It is within the broad discretion of the [sentencing] court to impose conditions as long as the conditions are reasonable and appropriate.” *State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499. We review the conditions imposed to determine whether those conditions “served the twin objectives of rehabilitation of the offender and protection of the public.” *See State v. Thiel*, 2012 WI App 48, ¶6, 340 Wis. 2d 654, 813 N.W.2d 709. There is, however, “a strong public policy against interfering” with the sentencing court’s exercise of discretion, and the sentencing court “is

presumed to have acted reasonably.” *See State v. Pico*, 2018 WI 66, ¶52, 382 Wis. 2d 273, 914 N.W.2d 95. A defendant challenging a sentence “has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue.” *See id.* (citation omitted).

Tolbert notes that the sentencing court imposed the cash condition, as well as limitations on the number of cell phones and phone numbers he could have, because those items are often tools of the drug trade. “Understanding the [sentencing] court’s concerns,” Tolbert does not challenge the phone limitations, but argues that the cash condition “will ultimately impose greater challenges than the [sentencing] court anticipated.” He also argues that deterrence and community protection are “achieved through the other conditions of supervision” such as requiring drug treatment and random drug testing.

As the sentencing court noted, large amounts of cash are a tool used by drug dealers. As the circuit court noted, limiting the amount of cash Tolbert can carry aids in deterrence and community protection by prohibiting Tolbert from possessing that drug-dealing tool. This limitation is particularly reasonable and appropriate in light of Tolbert’s extensive history involving drug distribution.

Further, Tolbert’s argument that this limitation is unacceptably burdensome is unavailing. For one thing, “[c]onvicted felons do not enjoy the same degree of liberty as those individuals who have not been convicted of a crime.” *See State v. Stewart*, 2006 WI App 67, ¶12, 291 Wis. 2d 480, 713 N.W.2d 165. Thus, conditions of supervision may even impinge upon a constitutional right, so long as they are not overly broad and are reasonably related to the defendant’s rehabilitation. *See id.*

While it may be inconvenient, we are not persuaded that the cash restriction will prevent Tolbert from “using money earned to pay for necessities costing over \$200—such as rent, things needed for his children, fiancée, and himself[.]” Tolbert is not prevented from using money or from making arrangements that do not involve him possessing more than \$200 in cash to pay for rent and other expenses; he is prevented only from carrying more than \$200 in cash.⁴

We are therefore unpersuaded that the sentencing court’s limitation on the amount of cash Tolbert is allowed to carry is an unreasonable or inappropriate condition of extended supervision. The sentencing court properly exercised its discretion, and the circuit court did not err in denying the postconviction motion.

Upon the foregoing,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* 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

⁴ We are also unconvinced that \$200 is too arbitrary an amount to be sustained; “the exercise of discretion does not lend itself to mathematical precision.” *See State v. Gallion*, 2004 WI 42, ¶49, 270 Wis. 2d 535, 678 N.W.2d 197. In any event, \$200 is a reasonable amount that should allow Tolbert to make ordinary, everyday purchases—say, for example, groceries and gasoline—while limiting his ability to traffic narcotics.