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DISTRICT II

September 11, 2019

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

2018AP1921-CR State of Wisconsin v. Javair L. Kentcy (L.C. #2017CF1063)

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).

Javair Kentcy appeals from a judgment convicting him of possessing tetrahydrocannabinols as a second and subsequent offense. On appeal, he challenges his sentence. 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 Because the circuit court properly exercised its sentencing discretion, we affirm the judgment.

After Kentcy pled guilty to possessing tetrahydrocannabinols, the circuit court sentenced him to fifteen months of initial confinement and two years of extended supervision, consecutive to a ninety-day sentence in a disorderly conduct case arising from a dispute with Kentcy's girlfriend whom a police officer described as having visible injuries. After the circuit court imposed sentence, Kentcy sought clarification as to whether the circuit court had based its possession sentence on his domestic violence history. The circuit court responded that consideration of Kentcy's prior conduct was appropriate at sentencing.

On appeal, Kentcy argues that the circuit court misused its sentencing discretion in the possession case because it relied on an improper factor: his prior history of domestic violence.

We will uphold a sentencing court's discretionary decision if the decision has a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning the sentence, the circuit court may consider, among other things, the defendant's character and prior proven and unproven past conduct and offenses,² and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The weight of the sentencing factors is within the circuit court's discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20.

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

² *State v. McQuay*, 154 Wis. 2d 116, 126, 452 N.W.2d 377 (1990).

We are not persuaded by Kentcy's challenge to the sentence or by his characterization of the circuit court's sentencing rationale as imposing a sentence for other than the possession offense. It is undisputed that Kentcy has numerous prior domestic violence and related offenses, along with a prior possession of tetrahydrocannabinols offense. At sentencing, the circuit court considered Kentcy's character, lack of employment, and history of prior domestic violence, which were all proper sentencing considerations. The weight placed on these considerations was for the circuit court to determine. The circuit court did not consider any improper information at sentencing.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is 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