



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 II

October 23, 2019

To:

Hon. Joseph W. Voiland
Circuit Court Judge
Ozaukee County Circuit Court
1201 S. Spring Street
Port Washington, WI 53074

Hon. Dennis P. Moroney
Reserve Judge
Ozaukee County Courthouse
1201 S. Spring Street
Port Washington, WI 53074

Marylou Mueller
Clerk of Circuit Court
Ozaukee County Circuit Court
1201 S. Spring Street
Port Washington, WI 53074-0994

Cary E. Bloodworth
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Adam Y. Gerol
District Attorney
P.O. Box 994
Port Washington, WI 53074-0994

Tiffany M. Winter
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:

2018AP1959-CR

State of Wisconsin v. Shannon L. Dertz (L.C. #2016CF216)

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).

Shannon L. Dertz appeals from a judgment of conviction and an order denying his postconviction motion.¹ He contends that the circuit court erroneously exercised its discretion at his sentencing after revocation. 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).² We affirm.

Dertz was convicted following a guilty plea to felony bail jumping. He had violated his felony bond in another case by operating a motor vehicle while revoked. The circuit court withheld sentence and placed Dertz on probation for three years.

Shortly thereafter, Dertz's probation was revoked,³ and he appeared before the circuit court for sentencing after revocation. There, the court imposed two and one-half years of initial confinement and three years of extended supervision, which was consistent with the recommendation of the department of corrections (DOC).

Dertz subsequently filed a postconviction motion, arguing that the circuit court erroneously exercised its discretion at his sentencing after revocation. Specifically, Dertz complained that the court failed to adequately explain its reasoning for the sentence imposed. After a hearing on the matter, the court denied the motion. This appeal follows.

¹ The Honorable Joseph W. Voiland entered the judgment of conviction. The Honorable Dennis P. Moroney entered the order denying Dertz's postconviction motion.

² All references to the Wisconsin Statutes are to the 2017-18 version.

³ According to the revocation summary, Dertz drove a vehicle while under the influence of alcohol, made threatening statements to law enforcement officers, and failed to comply with verbal directions given by law enforcement.

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We afford a strong presumption of reasonability to the circuit court’s sentencing determination because that court is best suited to consider the relevant factors and demeanor of the defendant. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76.

“[T]o properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence.” *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. “The primary sentencing factors which a court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public.” *Ziegler*, 289 Wis. 2d 594, ¶23. The weight to be given to each sentencing factor is within the discretion of the court. *Id.*

The circuit court’s duty at the sentencing after revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. Where, as in the present case, the same judge presides at both proceedings, we will consider the original sentencing reasons to be implicitly adopted at the sentencing after revocation. *State v. Reynolds*, 2002 WI App 15, ¶8, 249 Wis. 2d 798, 643 N.W.2d 165.

Here, the record reveals that the circuit court’s sentencing after revocation decision had a rational and explainable basis. The court expressly noted the primary sentencing factors. In considering Dertz’s character, it described his criminal record as “substantial.” Likewise, it recognized that it was only hearing the case again because Dertz had failed to comply with the terms of his supervision and had his probation revoked. Ultimately, the court agreed with the

recommendation of the DOC, finding it “appropriate.”⁴ Although Dertz may believe that the court should have focused more on the underlying offense, it was up to the court, not him, to determine how much weight to give each factor. In any event, on this record, we perceive no erroneous exercise of discretion.

Upon the foregoing reasons,

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

⁴ The circuit court’s consideration of the recommendation was proper. *See State v. Brown*, 2006 WI 131, ¶24, 298 Wis. 2d 37, 725 N.W.2d 262 (recommendation of the DOC should be considered by the circuit court in a reconfinement decision).