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

2018AP966-CR

State of Wisconsin v. Keaton T. Koch (L.C. # 2015CF353)

Before Blanchard, Graham, and Nashold, 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).

Keaton Koch appeals a judgment of conviction for burglary and also appeals the circuit court's order denying his motion for postconviction relief. Koch argues that the circuit court erroneously exercised its sentencing discretion in determining that he was not eligible for the Substance Abuse Program (SAP) and the Challenge Incarceration Program (CIP). Koch also

argues that the court was objectively biased. 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(1) (2017-18).¹ We affirm.

Koch was convicted based on a plea agreement under which he entered a guilty plea to the burglary charge. Other charges were dismissed and read in. The circuit court sentenced Koch to five years of initial confinement and four years of extended supervision.

Koch first argues that the circuit court erroneously exercised its sentencing discretion in determining that he was not eligible for SAP and CIP, thereby disqualifying him from the possibility of early release from confinement. Koch concedes that, under *State v. Owens*, 2006 WI App 75, 291 Wis. 2d 229, 713 N.W.2d 187, the court need not make separate findings specific to eligibility for SAP and CIP. Rather, all that is required is that the court's overall sentencing rationale reasonably justifies its determination as to such programs. *See id.*, ¶9. Koch argues, however, that the court failed to articulate sufficient legitimate reasons for determining that Koch was not eligible. We disagree.

The sentencing transcript shows that the circuit court's reasoning was more than adequate to justify its determinations as to SAP and CIP. The court found that Koch's burglary offense was "serious." It considered Koch's long criminal history and his previous failures in alternative programs, probation, and extended supervision. The court found that the need to protect the public from Koch was high. After considering Koch's history, his character, and the nature of his crime, the court stated that Koch "need[ed] to be locked up for a long time." The court

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

explained that a prison term “confines you away from the public so [that] for the period of time you are incarcerated, you’re not out victimizing other people.” The court determined that Koch’s rehabilitation prospects were poor, and that “the trajectory that you’re on is just a career criminal trajectory and ... incapacitation is what I have to do.” It noted that “[a]ny treatment you need needs to be in a confined setting.” Finally, the court stated that it had considered seven and a half years of initial confinement, but, in imposing only four years, was taking the parties’ plea agreement into account.² In sum, the court’s decision makes clear that the court reasonably determined that Koch should not serve any less than the full four years of confinement imposed, and that Koch was unlikely to benefit from SAP or CIP.

Koch asserts that the circuit court nonetheless erroneously exercised its discretion because the court made a comment in which it compared imprisoning Koch to “quarantining a dangerous animal.” We disagree. As we discuss below in addressing Koch’s judicial bias argument, Koch takes the court’s comment out of context. The comment does not change our conclusion that the court’s overall sentencing rationale supported its exercise of discretion as to SAP or CIP.

Turning to Koch’s judicial bias argument, Koch contends that the circuit court’s “quarantining a dangerous animal” comment showed that the court was objectively biased. We review the question of bias de novo. *See State v. Goodson*, 2009 WI App 107, ¶7, 320 Wis. 2d 166, 771 N.W.2d 385. “We presume a judge has acted fairly, impartially, and without bias; however, this presumption is rebuttable.” *Id.*, ¶8. “Objective bias can exist in two situations.”

² As part of the plea agreement, the State agreed to cap its recommendation for initial confinement at four years.

Id., ¶9. “The first is where there is the appearance of bias.” *Id.* “[T]he appearance of partiality constitutes objective bias when a reasonable person could question the court’s impartiality based on the court’s statements.” *Id.* “The second form of objective bias occurs where ‘there are objective facts demonstrating ... the trial judge in fact treated [the defendant] unfairly.’” *Id.* (quoted source omitted).

Koch asserts that the circuit court’s comparison of imprisoning him to “quarantining a dangerous animal” was dehumanizing and, in principle, akin to calling him a monster. He argues that it establishes both types of objective bias.

We consider the circuit court’s choice of language to have been less than ideal. However, its reference to “quarantining a dangerous animal” was part of a broader comment that is not reasonably viewed as a statement that Koch lacked humanity or deserved less than human treatment. Rather, the court was explaining the need to protect the public from a dangerous person, albeit using a metaphor that risked misunderstanding. The court said:

[P]rison protects the public by quarantining a dangerous animal. And I’m an animal. We’re all animals. I love animals. And so when I say animal, I’m not saying it in any derogatory fashion. But it’s an important thing to do, for my job, ... to protect the public. That’s one of the things I need to look at.

The court expressed much the same sentiment in different form when it unobjectionably stated that imprisonment “confines you away from the public so [that] for the period of time you are incarcerated, you’re not out victimizing other people.” We conclude that the court’s reference to “quarantining a dangerous animal,” when placed in its broader context, does not establish objective bias.

Therefore,

IT IS ORDERED that the circuit court's judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals