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

2018AP2219-CR

State of Wisconsin v. Evan L. Brookshire (L.C. # 2017CF3057)

Before Brash, P.J., Kessler 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).

Evan L. Brookshire appeals a judgment convicting him of two counts of first-degree recklessly endangering safety with use of a dangerous weapon, as a party to a crime. He also appeals an order denying his postconviction motion. He argues that the circuit court misused its sentencing discretion. After review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18). We affirm.

Brookshire was a passenger in a car that rear-ended another car at a stoplight at around 10:00 p.m. Two men in the car that was hit got out of their car to look at the damage. Brookshire got out of his car with a gun and shot the men multiple times. Brookshire was charged with two counts of attempted first-degree intentional homicide. Brookshire pled guilty to two reduced charges of first-degree recklessly endangering safety. The circuit court sentenced him to a total of fifteen years of initial confinement and eight years of extended supervision. Brookshire moved for postconviction relief, arguing that the circuit court misused its sentencing discretion. The circuit court denied the motion.

“The standards governing appellate review of an imposed sentence are well settled.” *State v. Taylor*, 2006 WI 22, ¶17, 289 Wis. 2d 34, 710 N.W.2d 466. Our review is limited to whether the circuit court properly exercised its discretion. *See id.* The term discretion “contemplates a process of reasoning” that depends “on facts that are of record or that are reasonably derived by inference from the record.” *Id.* (citation omitted). In addition, the circuit court’s decision must be “based on a logical rationale founded upon proper legal standards.” *Id.* (citation omitted).

Brookshire argues that the circuit court misused its discretion because it stated at sentencing that it thought that the shootings did not result from a dispute over the accident, but instead occurred because Brookshire was trying to steal the victims’ car. The circuit court said:

Now, I suppose I could accept the story that [this] was just a rear ending, that people lost their temper. But given what I can read from this and read between the lines, [this is] just one of these deals where [one person] rear ends somebody. The other person hops out of the car and tries to steal their car. Come on. I wasn’t born yesterday. That is quite apparent. I don’t think there was any anger [because] there was an accident. I think this was intentional from the getgo.

Brookshire contends that there is nothing in the record to support the circuit court's conclusion that this was an attempted carjacking rather than a road rage incident.

The circuit court's inference that the shooting was not the result of Brookshire losing his temper after the accident was a reasonable inference based on the facts before the court. The victim, C.P., informed the court that, in his view, he was shot during a carjacking. C.P. said in his victim impact statement that the shooting had happened "for [absolutely] no reason, other than Evan Brookshire looked high off his ass, and he was trying to [car]jack my [L]incoln and he got excited and started shooting." In addition, the prosecutor noted at sentencing that Brookshire's car was at fault in the accident, yet Brookshire was the person who exited the car with a gun and started shooting, which made no sense. The circuit court reasonably inferred that the facts *did* make sense when viewed as a carjacking, which the court implied it had seen before in these circumstances. The circuit court's statements were not mere speculation. They were grounded on facts before the court and reasonable inferences from the facts. *See id.* Therefore, the circuit court did not misuse its sentencing discretion.

IT IS ORDERED that the judgment of conviction and order denying postconviction relief 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