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DISTRICT II

September 16, 2020

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

2019AP1427-CR

State of Wisconsin v. Lisa M. Wilke (L.C. #2018CF1148)

Before Neubauer, C.J., Reilly, P.J., and Davis, 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).

Lisa M. Wilke appeals from a judgment convicting her of two counts of delivering a controlled substance pursuant to WIS. STAT. § 961.41(1)(a) (2017-18)¹ and from the circuit court's order denying her motion for resentencing. Wilke argues that the court erroneously

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

exercised its discretion in sentencing her without identifying and addressing specific mitigating factors. 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. The circuit court properly exercised its discretion. We affirm.

Wilke was involved in three controlled buys of narcotics to a confidential informant. The State charged Wilke with three counts of delivery of schedule I or II narcotics and one count of maintaining a drug trafficking place. She pled guilty to two counts of delivering a controlled substance pursuant to WIS. STAT. § 961.41(1)(a), and the other counts were dismissed but read in at sentencing. On each count, the circuit court imposed and stayed a concurrent prison sentence of four years: two years' initial confinement and two years' extended supervision. The court placed Wilke on probation for three years, which included one year of conditional jail time, six months of which was to be served "through the Huber facility with release for treatment or work."

On appeal, Wilke argues the court "did not address any ... 'mitigating factors' prior to" sentencing her. We disagree. The court considered all the required sentencing factors and stated on the record the reasons for the sentence imposed.

The circuit court is required to state the reasons for the sentence imposed on the record. WIS. STAT. § 973.017(10m); *State v. Gallion*, 2004 WI 42, ¶5, 270 Wis. 2d 535, 678 N.W.2d 197. The weight the court gives each sentencing factor lies within the circuit court's discretion, and the court may base the sentence on any or all of them. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. In this case, the court in its sentencing remarks addressed the protection of the public, the gravity of Wilke's offense, and Wilke's rehabilitative needs. *See*

§ 973.017(2); *Gallion*, 270 Wis. 2d 535, ¶40. The court further considered Wilke’s character, how she conducted herself during the case, and that she had no prior record aside from a retail theft that was dismissed. The court also questioned whether Wilke understood the seriousness of her crime due to the excuses she was offering, her failure to appear at her initial PSI interview, and her claim that she was “not aware of the opioid epidemic.” The court, given Wilke’s excuses for her criminal behavior, fashioned a sentence “sufficient to send a signal” to Wilke such that she would appreciate the seriousness of her offense. The court met and exceeded the *Gallion* sentencing factors. We see no error in the court’s exercise of its sentencing discretion.

Wilke identifies nine mitigating factors that she argues the circuit court failed to take into account. Wilke’s argument fails as the court had no obligation to identify potential mitigating factors as the circuit court determines which mitigating factors it deems applicable. *State v. Grady*, 2007 WI 81, ¶41, 302 Wis. 2d 80, 734 N.W.2d 364 (“It ‘remains within the discretion of the circuit court to discuss only those factors it believes are relevant.’” (citation omitted)). Many of the factors Wilke argues the circuit court overlooked are factors that our supreme court has held the circuit court “may,” but is not required, to consider. *See State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. Further, other factors Wilke identified were addressed by the court, but simply did not hold the weight that Wilke intended.

As the court properly examined the relevant facts of Wilke’s crimes and her life and reached a conclusion that a reasonable judge could reach, we affirm her sentence. *See State v. Villamil*, 2017 WI 74, ¶23, 377 Wis. 2d 1, 898 N.W.2d 482; *State v. Conger*, 2010 WI 56, ¶14, 325 Wis. 2d 664, 797 N.W.2d 341.

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