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DISTRICT I

February 2, 2021

To:

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

2020AP46-CR State of Wisconsin v. Candace N. Turner (L.C. # 2018CF618)

Before Brash, P.J., Dugan and Donald, 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).

Candace N. Turner appeals a judgment convicting her of child neglect, resulting in great bodily harm. She also appeals the circuit court's order denying her motion for postconviction relief. Turner argues that the circuit court erroneously exercised its sentencing discretion. She also challenges the restitution order. We conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).¹ Upon review, we affirm.

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

Turner ran a daycare center in her home. S.H., a twenty-month-old child, sustained severe injuries while in Turner's care. S.H.'s mother dropped him off at 8:30 a.m., at which time he was acting playful and waved good-bye to her. At 4:30 p.m., the police responded to a 911 call from Turner's home and found S.H. unresponsive. He would not open his eyes or respond to stimuli and had approximately thirty bruises covering his body, including one large bruise to his forehead. At the hospital, S.H. was found to have extensive injuries to his spine and brain, which have had severe and permanent effects on him. Turner pled guilty to one count of child neglect where great bodily harm was a consequence. The State dismissed and read in a charge of physical abuse of a child, recklessly causing great bodily harm. The circuit court sentenced Turner to three years of initial confinement and four years of extended supervision.

Turner argues that the circuit court erroneously exercised its sentencing discretion by giving insufficient consideration to the responsibility she took by pleading guilty and imposing a sentence that was too harsh.

Our standard of review is well established. We will affirm the circuit court's sentencing decision unless it erroneously exercises its discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "[A] discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination." *Milwaukee Women's Med. Serv., Inc., v. Scheidler*, 228 Wis. 2d 514, 524, 598 N.W.2d 588 (Ct. App. 1999) (citation omitted).

When imposing a sentence, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, 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 circuit court may also consider a wide range of additional factors related to the defendant, the offense, and the community. *See id.* The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. *See State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. We defer to the circuit court’s “great advantage in considering the relevant factors and the demeanor of the defendant.” *See State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

Our review of the circuit court’s lengthy sentence remarks show that it considered the mandatory sentencing factors and thoroughly explained the basis for the sentence it imposed. The circuit court discussed the three primary sentence factors in detail. Considering the gravity of the offense first, the circuit court said that after reviewing the conflicting medical evidence, it found Turner’s explanation of how S.H. sustained his injuries to be implausible. The circuit court explained that it did not believe that S.H. fell off a picnic table that was eighteen inches from the floor and then was hit or run over by an eight-month-old in a walker. The circuit court stated that children fall all the time and do not suffer these types of injuries so, while it did not know what happened, it did not believe Turner’s explanation. The circuit court also stated that S.H.’s injuries were some of the most severe he had ever seen outside the context of homicide. The circuit court noted that S.H. may never be able to walk or run and he may never be able to communicate as a result of his injuries.

In addressing Turner’s character, the circuit court began by stating that Turner had good character. She was well educated, ran her own business, had a supportive family, did not have any drug or alcohol issues, and had the support of her community and current and former clients. The circuit court explained that it was difficult to assess her acceptance of responsibility even

though she pled guilty because it did not believe her account of how S.H. was injured. Turning to the safety of the public, the circuit court said that there was little need to protect the public from Turner but her sentence would serve to deter others in her position.

The circuit court's sentencing comments show that it considered the facts of this case in accord with the controlling law and imposed a reasonable sentence, which it explained. The circuit court *did* give Turner credit for taking responsibility by pleading guilty but weighed that against the fact that it did not believe that Turner had truthfully explained what caused S.H.'s injuries. Balancing Turner's status as a first time offender with good character and the catastrophic injuries S.H. suffered, the three-year term of initial confinement is not too harsh. Therefore, we conclude that the circuit court properly exercised its sentencing discretion.

Turner next argues that the restitution order of \$30,284 should be reduced because it exceeds her ability to pay. At the restitution hearing, Turner's counsel informed the circuit court that there was a joint agreement for the court to order the restitution requested and that Turner was waiving her right to present any evidence. Where, as here, a defendant stipulates to the amount of restitution requested under WIS. STAT. § 973.20(13), we will not reverse the award. *See State v. Hopkins*, 196 Wis. 2d 36, 44, 538 N.W.2d 543 (Ct. App. 1995). Therefore, we reject Turner's challenge to the restitution order.

Upon the foregoing,

IT IS ORDERED that the judgment and the order of the circuit court 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