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DISTRICT II

May 5, 2021

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

2020AP19-CR State of Wisconsin v. Lynette R. Whitford (L.C. #2016CF307)

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).

Lynette R. Whitford appeals from a judgment of conviction for theft greater than $10,000 and an order denying her postconviction motion.[1] She claims the circuit court erroneously

[1] The Honorable Joseph W. Voiland presided over the plea hearing, entered the judgment of conviction, and sentenced Whitford. The Honorable Steven M. Cain denied the postconviction motion.

exercised its discretion in its sentencing of her. 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 (2019-20).[2] We affirm.

We will affirm a circuit court's exercise of its sentencing discretion as long as it did not erroneously exercise that discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "A circuit court properly exercises its discretion if it relies on relevant facts in the record and applies a proper legal standard to reach a reasonable decision." ***State v. Thiel***, 2012 WI App 48, ¶6, 340 Wis. 2d 654, 813 N.W.2d 709.

Whitford pled no contest to one count of theft for having incrementally embezzled over $205,000 from a nonprofit organization for which she was a board member, had helped manage finances, and had access to its credit card. For her crime, the circuit court could have sentenced her to a ten-year prison sentence and imposed up to $25,000 in fines, *see* WIS. STAT. §§ 943.20(1)(a), (3)(c), 939.50(3)(g), but it ultimately sentenced her to four years of initial confinement and five years of extended supervision. She was also ordered to pay the restitution of over $205,000. She filed a postconviction motion seeking resentencing, which was denied. She appeals.

Whitford claims the circuit court's sentence was excessive because she was "a first time offender" and an "[a]nalysis of sentences for embezzlement in Ozaukee County for the past 20 years showed no first time offender was ever sentenced to prison." She compares her case to that of ***State v. McCleary***, 49 Wis. 2d 263, 182 N.W.2d 512 (1971), in which the offender had been

[2] All references to the Wisconsin Statutes are to the 2019-20 version.

sentenced to an indeterminate term of not more than ten years for a single count of writing a forged $50 check. ***Id.*** at 286. In that case, our supreme court determined that the sentence was excessive. ***Id.*** Whitford claims that the facts of the ***McCleary*** case are "striking[ly] similar[]" to the facts of her case. We see the facts as strikingly different as a one-time act of a fifty dollar forgery can hardly compare with multi-year repeated acts of thievery amounting to over $205,000.

In sentencing Whitford, the circuit court considered but rejected probation because of the severity of the offense:

> In terms of the number of times that this happened, this is substantial. It happened repeatedly time and time again, day in and day out, for a period of several years. It didn't just happen one time.… [W]e're talking about dozens, if not hundreds, of different transactions over the course of several years that Ms. Whitford is being sentenced on.

The court noted that Whitford had already received some level of leniency because she was "being sentenced on only one count [of] felony theft in excess of $10,000." "The district attorney's office more than likely could have charged this as a 50 count or 100 count Information with many … different crimes based upon the transactions that occurred on a day in and day out basis." Instead, "[t]he prosecutor charged it as one aggregate offense in excess of $10,000." The court emphasized that "it matters that this happened on a day in, day out basis for a period of years[, which] points to a higher level of severity of the crime."

The circuit court acknowledged that at sentencing numerous individuals had indicated their support for Whitford and that they still trusted her, but it nonetheless determined that a "higher range sentence on the ten-year scale" was appropriate due to the severity of the crime, that again being that Whitford committed these thefts "day in, day out for a period of years."

The court stated that the public needed to be protected and a "higher-level sentence" also was appropriate because this was "fraud" committed "by a person in a position of trust" in the organization, which the court viewed as "more severe on the scale here than a run-of-the-mill felony theft in excess of this amount.… She was given the keys essentially. She was given the trust. And she breached the trust."

The circuit court also expressed additional concern with Whitford's character as it noted that she tried to deny her crime when first confronted with it, pointing out that she initially claimed that she thought she was using her own credit card, not that of the nonprofit organization, which the court noted could not have been the truth since "that would have been a one-time thing. It wouldn't be something that went on and on and on and on for days and months and years." The court also was unimpressed with Whitford's position that, as the court expressed it, "the amount that was taken is less than your inheritance so your inheritance will just cover it" and her claim that some trust assets may cover the amount she stole. The court also noted the harm Whitford did to the nonprofit organization from which Whitford stole the funds and that there was the "need[] to have a restorative aspect" and "a longer period of supervision" to ensure Whitford fully paid the restitution amount.

We conclude that the circuit court properly exercised its sentencing discretion as it "relie[d] on relevant facts in the record and applie[d] a proper legal standard to reach a reasonable decision." *See* ***Thiel***, 340 Wis. 2d 654, ¶6. Even though this was Whitford's first offense, it was significant. The crime of which she was convicted and sentenced was for theft in excess of $10,000, yet she engaged in many repeated acts of theft over a period of years totaling more than twenty times that amount. As the circuit court noted, to accomplish this, she repeatedly made the conscious decision to steal from the nonprofit organization that placed its

trust in her. The length of initial confinement time the court ordered was justified based upon her repeated acts of theft, the amount of money she stole, and that she did it from a position of trust, and the lengthy period of extended supervision was justified to help ensure the nonprofit organization receives the significant amount of restitution due to it from Whitford. All this was properly articulated by the court in issuing its sentence.[3]

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order 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

[3] Whitford also briefly complains that the circuit court made a comment to the effect of "Mercy comes from God. Justice comes from the Court." Because she fails to sufficiently develop a legal argument related to this complaint, we do not consider it. *See* ***Clean Wis., Inc. v. PSC***, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768 ("We will not address undeveloped arguments.").