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DISTRICT II

June 9, 2021

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

2020AP411-CR

State of Wisconsin v. Mack A. Exson (L.C. #2015CF118)

Before Reilly, P.J., Gundrum and Davis, 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).

Mack A. Exson appeals from a judgment of conviction and an order denying his postconviction motion. He contends that the circuit court erroneously exercised its discretion at sentencing. 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).¹ We modify the judgment, affirm the judgment as modified, affirm the order, and remand for entry of an amended judgment consistent with this opinion.

Exson was convicted following a guilty plea to aggravated battery as a repeater. He was accused of attacking a woman in a dispute over a twenty-dollar bill. The circuit court sentenced him to five years of initial confinement and three years of extended supervision. It also ordered, as conditions of extended supervision, that Exson obtain the court's permission before residing with women or children.

Exson filed a postconviction motion for relief. In it, he accused the circuit court of erroneously exercising its discretion at sentencing in several ways: (1) by failing to explain the reasons for its sentence; (2) by relying on an irrelevant and improper factor;² and (3) by imposing unreasonable conditions of extended supervision. The court denied the motion in a written order. Exson now appeals.

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We afford a strong presumption of reasonability to the circuit court's sentencing determination because that court is best suited to consider the

¹ All references to the Wisconsin Statutes are to the 2019-20 version.

² At sentencing, the circuit court discussed the statistical risks of physical and sexual abuse of children who live with a biological parent and their parent's partner. This was because Exson had been residing with his girlfriend and her children and expressed an interest in remaining involved in one child's life. Exson found the court's discussion objectionable, as he was not accused of physically or sexually abusing a child in this case.

relevant factors and demeanor of the defendant. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76.

To properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence. *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. The primary sentencing factors that a court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Ziegler*, 289 Wis. 2d 594, ¶23. The weight to be given to each sentencing factor is within the discretion of the court. *Id.*

A circuit court erroneously exercises its discretion at sentencing when it relies on a clearly irrelevant or improper factor. *State v. Dalton*, 2018 WI 85, ¶36, 383 Wis. 2d 147, 914 N.W.2d 120. A defendant bears the burden of proving by clear and convincing evidence that the court actually relied on the irrelevant or improper factor. *State v. Alexander*, 2015 WI 6, ¶17, 360 Wis. 2d 292, 858 N.W.2d 662.

Finally, it is within the circuit court's broad discretion to impose conditions of extended supervision as long as they are reasonable and appropriate. *State v. Miller*, 2005 WI App 114, ¶11, 283 Wis. 2d 465, 701 N.W.2d 47. Whether conditions are reasonable and appropriate is determined by how well they serve the dual goals of supervision: rehabilitation and protection of a state or community interest. *Id.*

Here, we conclude that the circuit court adequately explained the reasons for its sentence. The court began its remarks by examining Exson's numerous convictions that spanned three decades. It highlighted Exson's prior domestic violence conviction, prior conviction for child abuse, and prior conviction for attempted aggravated carjacking where someone was killed. The court noted that Exson was back "again for a crime involving using force and causing harm to

another.” Although the court did not detail the facts of the aggravated battery, there is no doubt that it viewed it as a serious offense. Likewise, there is no doubt what drove its sentencing decision. The court reasonably determined, based on Exson’s criminal history, that he posed “a high risk to the public.” Accordingly, a prison sentence was necessary to protect the public from further violence.

We also conclude that the circuit court did not rely on an irrelevant or improper factor. It is true that Exson was not accused of abusing a child in this case. However, it is also true that Exson had a prior conviction for child abuse and had expressed an interest in remaining involved in the life of his girlfriend’s son. Again, the circuit court was required to consider the need to protect the public at sentencing. Thus, its discussion of the risk that Exson posed to children who may live with him was not erroneous.

Finally, we are satisfied that the conditions of extended supervision reflect a proper exercise of discretion. As noted, Exson’s criminal history includes convictions for domestic violence and crimes against women and children. Given this record, it was reasonable and appropriate to require him, during the term of his supervision, to seek permission before residing with women and children. Such a requirement both promotes his rehabilitation and protects a state or community interest.

On this last point, we conclude that the circuit court lacked authority to require Exson to return to it, rather than the department of corrections, when seeking permission to reside with women or children. The legislature has tasked the department of corrections, not the courts, with supervising offenders. *See* WIS. STAT. § 301.03(3). The conditions of extended supervision

must be amended to reflect that.³ Accordingly, we modify the judgment; affirm the judgment as modified; affirm the order and remand for entry of an amended judgment consistent with this opinion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is modified; the modified judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21; and the cause is remanded for entry of an amended judgment consistent with this opinion.

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

Sheila T. Reiff
Clerk of Court of Appeals

³ The judgment of conviction currently states, “May not reside with anyone of the opposite sex without court’s permission,” and “Do not reside with any person in any place in which children reside without court’s permission.” It shall be amended to read, “May not reside with anyone of the opposite sex without permission of the supervising agent,” and “Do not reside with any person in any place in which children reside without permission of the supervising agent.”