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DISTRICT I

July 13, 2021

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Circuit Court Judge
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John Barrett
Clerk of Circuit Court
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Robert E. Webb Jr.
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You are hereby notified that the Court has entered the following opinion and order:

2019AP2016-CR	State of Wisconsin v. Daryll Glen Turner (L.C. # 2017CF4761)
2019AP2017-CR	State of Wisconsin v. Daryll Glen Turner (L.C. # 2017CF5682)

Before Dugan, Donald and White, 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).

Daryll Glen Turner appeals from judgments of conviction, following guilty pleas, of five counts of manufacturing or delivering between ten and fifty grams of heroin as a second or subsequent offense, and one count of fleeing or eluding a police officer. Turner also appeals the order denying his postconviction motion for relief. Turner contends that he is entitled to withdraw his guilty pleas because the circuit court failed to ascertain that he understood the elements of the drug offenses. He also argues that he is entitled to resentencing because the circuit court failed to

apply the “least punishment” principle and explain its rationale for imposing consecutive sentences. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

On October 16, 2017, the State charged Turner with one count of fleeing or eluding an officer in Milwaukee County Circuit Court Case No. 2017CF4761. On December 13, 2017, the State charged Turner with seven counts of delivering heroin, between ten and fifty grams, as a second or subsequent offense in Milwaukee County Circuit Court Case No. 2017CF5682. The complaint alleged that a confidential informant purchased between twelve and twenty grams of heroin from Turner on seven occasions beginning on July 14, 2016, and ending on November 22, 2016.

On October 26, 2018, pursuant to plea negotiations, Turner pled guilty to the fleeing/eluding charge and to counts two, three, five, six, and seven in case No. 2017CF5682. In exchange for his pleas, the State agreed to dismiss and read in counts one and four in case No. 2017CF5682 and to recommend a “global” sentence of twenty-five to twenty-seven years of imprisonment, including eighteen to twenty years of initial confinement and seven years of extended supervision. The circuit court conducted a colloquy with Turner. As relevant to this appeal, the circuit court addressed each count of the drug charges, including the date and location of each allegation, and asked Turner whether he understood that he was charged with “knowingly deliver[ing] heroin, a controlled substance, in an amount more than 10 grams but not [more than] 50 grams.” Turner responded in the affirmative. The circuit court also asked Turner whether he

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

understood that each count was charged as a second or subsequent offense. Turner stated that he understood. The circuit court also showed Turner a physical copy of the plea questionnaire and waiver of rights form and asked Turner whether he saw the form, signed it, reviewed the form with counsel, and understood the contents of the form. Turner responded in the affirmative. The circuit court also asked Turner whether he reviewed the relevant jury instructions with counsel, whether counsel explained the elements of the offenses, and whether counsel explained what the State would have to prove beyond a reasonable doubt. Turner responded in the affirmative. The circuit court asked Turner whether he wanted the court to review the jury instructions as well, or whether he understood counsel's explanation. Turner stated that he understood counsel's explanation. The circuit court then found that Turner's guilty pleas were knowing, intelligent, and voluntary, and accepted the pleas.

The matter proceeded to sentencing, where the State recommended a sentence of twenty-five to twenty-seven years of incarceration, consisting of eighteen to twenty years of initial confinement and seven years of extended supervision. Defense counsel recommended two to four years of incarceration for all of the counts.

In determining Turner's sentence, the circuit court discussed the gravity of the offense and the need to protect the community, noting the dangerousness of heroin and the number of heroin-related overdoses in the community. The circuit court also expressed concern with the amount of heroin Turner sold, stating, "in terms of heroin, just one gram, you can get somewhere between 10 and 20 doses depending on how people are selling them. So you can look at the numbers that you were providing, and that's really hundreds of potential doses being put in the community." The circuit court also discussed in detail the "devastat[ing]" effects heroin addictions have on families. The circuit court further discussed Turner's character, noting his minimal prior record, the letters

received on his behalf, and his family support. The circuit court then stated that it was going to take a five minute break to contemplate its decision.

When the circuit court returned on the record, it stated that it disagreed with both the State's and defense counsel's recommendations and ultimately sentenced Turner to a total of ten years of initial confinement and ten years of extended supervision on the heroin charges, and eighteen months of initial confinement and twelve months of extended supervision on the fleeing/eluding an officer charge. The circuit court ordered Turner's sentence for fleeing/eluding an officer to run concurrent to the sentence for the heroin charges.

Turner filed a motion for postconviction relief, arguing that: (1) his guilty pleas were not knowing, intelligent, and voluntary because the circuit court did not ensure that he understood the elements of heroin delivery during his plea colloquy, and (2) he should be resentenced because the circuit court did not adequately explain its sentencing determinations for each count such that Turner received the least amount of incarceration necessary under *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. The postconviction court denied the motion without a hearing. This appeal follows.

On appeal, Turner contends that he is entitled to withdraw his guilty pleas because the circuit court failed to establish that Turner understood the elements of the heroin charges and instead simply read the "preamble charging language in the criminal information." Alternatively, Turner argues that he is entitled to resentencing because the circuit court failed "to consider and acknowledge the 'least punishment' principle and explain the necessity of consecutive sentences." (Bolding and capitalization omitted.)

“When a defendant seeks to withdraw a guilty plea after sentencing, he must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in ‘manifest injustice.’” *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (citation omitted). Showing that a plea was not knowing, intelligent, or voluntary fulfills this burden. *Id.* Whether a plea is knowing, intelligent, and voluntary presents a question of constitutional fact. *Id.*, ¶19. “We accept the circuit court’s findings of historical and evidentiary facts unless they are clearly erroneous but we determine independently whether those facts” show that the plea was knowing, intelligent, and voluntary. *Id.*

In ascertaining whether a defendant understands the elements of the crime, a circuit court may employ varying methods, including, but not limited to: (1) summarizing the elements of the crime by reading from the appropriate jury instructions or statute; (2) asking defense counsel whether he or she explained the nature of the charge to the defendant with a summarization of the explanation’s extent; (3) referring to the record or other evidence of the defendant’s knowledge of the nature of the charge established prior to the hearing; or (4) referring to and summarizing any signed statement of the defendant which might demonstrate the defendant has notice of the nature of the charge. See *State v. Bangert*, 131 Wis. 2d 246, 268, 389 N.W.2d 12 (1986).

Here, the circuit court summarized the elements of the crime by reading from the charging document, asked Turner whether counsel reviewed the elements of the crime with him, physically showed Turner a copy of the plea questionnaire/waiver of rights form, and asked Turner whether he understood the contents. The circuit court further asked Turner whether he reviewed the jury instructions with counsel, and asked Turner whether he wished for the court to review the jury instructions as well. Turner answered all the circuit court’s questions in the affirmative and declined the circuit court’s offer to review the jury instructions, telling the court that he understood

counsel's explanation of the instructions. We are satisfied that the circuit court established Turner's understanding of the elements of the offenses and that Turner's pleas were knowing, voluntary, and intelligent.

Turner also contends that the circuit court failed to consider the "least punishment" principle in rendering his sentence and failed to explain why it imposed consecutive sentences.

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. *Gallion*, 270 Wis. 2d 535, ¶17. We afford a strong presumption of reasonability to the circuit court's sentencing determination because that court is best suited to consider the relevant factors and demeanor of the defendant. See *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76.

The "sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant." *Gallion*, 270 Wis. 2d 535, ¶23 (quoting *McCleary v. State*, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971)). However, in imposing the minimum amount of custody consistent with the appropriate sentencing factors, "minimum" does not mean "exiguously minimal," or insufficient to accomplish the goals of the criminal justice system. *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483.

In order to permit meaningful review, the circuit court "must articulate the basis for the sentence imposed on the facts of the record." *State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993). The circuit court has an additional opportunity to explain its sentence when challenged by postconviction motion. See *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). Nevertheless, if the circuit court "fails to specifically set forth the reasons for the sentence

imposed, this court is ‘obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained.’” *State v. Leighton*, 2000 WI App 156, ¶52, 237 Wis. 2d 709, 616 N.W.2d 126 (citation omitted).

While the circuit court should explain the linkage between the component parts of the bifurcated sentence and its sentencing objectives, *see Gallion*, 270 Wis. 2d 535, ¶46, it does not need “to provide an explanation for the precise number of years chosen.” *State v. Taylor*, 2006 WI 22, ¶30, 289 Wis. 2d 34, 710 N.W.2d 466.

Here, the circuit court discussed all of the sentencing factors, broke down each charge, and imposed a sentence based on the amount of heroin distributed in each instance. The circuit court was specifically troubled by the amount of heroin Turner distributed, telling Turner that he put hundreds of doses of a drug that “destroys lives” and “devastate[s] ... families” into the community. In its decision denying Turner’s postconviction motion, the circuit court explained that it “imposed what it determined to be the least amount of confinement time necessary to accomplish its sentencing goals and explained why that number was less than what the State was recommending but more than what defense counsel had requested.” In short, the circuit court explained why Turner’s particular sentence was warranted and provided ample reasons to demonstrate a proper exercise of sentencing discretion and how its sentence met the “least punishment” standard.

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the judgments 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