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DISTRICT II

July 21, 2021

To:

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Circuit Court Judge
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Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2020AP76-CR	State v. Xavier R. Williams (L.C. #2016CF33)
2020AP77-CR	State v. Xavier R. Williams (L.C. #2018CM746)

Before Neubauer, C.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).

Xavier R. Williams appeals from judgments of conviction and an order in this consolidated matter denying his postconviction motion, arguing that the circuit court erroneously exercised its sentencing discretion. 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 affirm.

Williams pled guilty to uttering a forgery relating to his involvement in a scheme to defraud a childcare business, and the circuit court sentenced him to two years of probation. The State later revoked Williams' probation after Williams engaged in a series of abusive acts towards his pregnant live-in girlfriend. Williams pled guilty to one count of disorderly conduct, domestic abuse, related to these abusive acts. While in jail for these acts, Williams violated a no-contact order with the victim by pressuring her to get an abortion and recant her statements.

At Williams' sentencing hearing on both the forgery and disorderly conduct charges, the circuit court highlighted Williams' failure to successfully complete probation, his no-contact order violation, lengthy prior criminal history, and a pattern of abuse towards his partner. The court opined, "I think you're a monster," after denying that Williams' involvement in the forgery offense was "minor" and commenting on Williams' abusive behavior toward his pregnant partner. The court also commented on society's increased tolerance of deviant behavior, stating that "only in an atmosphere" which "lionize[s]" "troublemakers" would offenders, like Williams, be able to claim that they have accepted responsibility for their actions merely by entering a guilty plea. The court sentenced Williams to the statutory maximum on both the forgery and disorderly conduct convictions.

Williams filed a motion for postconviction relief seeking resentencing. Williams argued that the circuit court erroneously exercised its discretion at sentencing by placing a strong

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

emphasis on the defendant's character and rehabilitative needs, while inadequately referencing the need to protect the public, the gravity of the offense, or why the maximum sentences were necessary for each charge. The court denied Williams' postconviction motion. Williams appeals.

We review a circuit court's sentencing decision under an erroneous exercise of discretion standard. *Ocanas v. State*, 70 Wis. 2d 179, 183, 233 N.W.2d 457 (1975). A court properly exercises its sentencing discretion when it relies on a "process of reasoning ... reasonably derived by inference from the record," and reaches conclusions "founded upon proper legal standards." *Id.* at 183, 185. Because circuit courts are presumed to have acted reasonably, as there is a strong policy against interference with the court's discretion, the complainant must show by clear and convincing evidence some unreasonable or unjustifiable basis on the record to demonstrate an erroneous exercise of discretion. *See id.* at 183-84; *see also State v. Harris*, 2010 WI 79, ¶4, 326 Wis. 2d 685, 786 N.W.2d 409; *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197.

Here, Williams has not adequately demonstrated an unreasonable or unjustifiable basis. At sentencing, the circuit court thoroughly supported its sentence by reasonably relying on facts such as Williams' lengthy criminal history, violent and predatory behavior, lack of success on probation, and lack of remorse. Through its review of these facts, the court similarly properly considered the primary sentencing factors: the gravity of the offense, the character of the appellant, and protection of the community. *See State v. Williams*, 2018 WI 59, ¶46, 381 Wis. 2d 661, 912 N.W.2d 373; *Harris*, 326 Wis. 2d 685, ¶28.

The circuit court considered the gravity of both offenses in their respective sentencing hearings, which must be viewed “on a global basis, treating the latter sentencing as a continuum of the first.” See *State v. Wegner*, 2000 WI App 231, ¶7, 239 Wis. 2d 96, 619 N.W.2d 289 (affirming “continuum” analysis where the original sentencing judge presides over resentencing). For Williams’ forgery charge the court reasoned, “[T]his idea that you just kind of had a minor role in this, that’s not true. You went in, and you actually cashed the check.” Despite Williams’ contention to the contrary, this statement clearly speaks to the offense’s gravity because it demonstrates that the court found it serious and significant. The court similarly highlighted the severity of the domestic abuse charge: “[w]hat kind of man roughs up a woman like that? I can’t think it’s acceptable even under any circumstances, but especially when she’s pregnant with his child.” The court added that the offenses were so extreme that they were “predatory.”

The circuit court considered Williams’ character and the risk to the community by reviewing Williams’ criminal history and apparent lack of remorse for his actions. Regarding Williams’ character the court reasoned, “[Y]ou’re a dishonest person because you’ve got a long history of criminal activity. Theft, resisting an officer or obstruction, bail jumping, theft, burglary, theft.” After considering the appellant’s repeated abuse toward his girlfriend while on probation for forgery, the court similarly concluded, “I think you’re a monster” and “you proved you’re a very bad [citizen].” In arriving at these character judgments, the court then addressed how Williams’ violent behavior and questionable character may impact the community’s safety: “favorable considerations ... are outweighed by the cruelty and violence of this defendant and the risk to the public.”

While Williams may disagree with its assessments, the circuit court’s reasoning for imposing its sentence—demonstrates a “result which a reasonable judge could reach,” and,

therefore, we will not “set aside [the] discretionary ruling of the [circuit] court.” *See State v. Grindemann*, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). Furthermore, while the court most heavily relied on Williams’ character and rehabilitative needs in considering its sentence and did not assess Williams’ comparative liability against his forgery codefendants, we reject Williams’ contention that this amounts to an erroneous exercise of discretion. *See id.* The court has the inherent discretion to determine which sentencing objectives are of the greatest importance and are most relevant to its decision. *Williams*, 381 Wis. 2d 661, ¶47. Here, the above-mentioned facts allowed the court to consider the primary sentencing factors and reasonably support its sentence.

Williams also challenges the process of reasoning explained above as insufficient because the circuit court did not separately proffer reasoning for each charge. We reject this argument as well. As we have expressly stated, if “a defendant is properly convicted of two crimes and the court adequately explains its reasons for selecting the total period of incarceration imposed for those crimes, we see no need to require it to jump through still another hoop.” *State v. Johnson*, 178 Wis. 2d 42, 56 n.5, 503 N.W.2d 575 (Ct. App. 1993) (finding that circuit court’s detailing its reasoning for a forty-year sentence—the result of two separate charges with maximum sentences—is adequate).

Similarly, it is not necessary for the court, as Williams posits, to explain why it did not impose a lower sentence. *See id.* Instead, as clarified above, the court properly exercises its sentencing discretion when it adequately considers the primary sentencing factors and follows a process of reasoning reasonably supported by the record. *Ocanas*, 70 Wis. 2d at 185. Because Williams cannot demonstrate through clear and convincing evidence that the circuit court’s

sentence is one that no “reasonable judge could reach,” we conclude that the court did not erroneously exercise its discretion. *See Grindemann*, 255 Wis. 2d 632, ¶30.

Upon the foregoing reasons,

IT IS ORDERED that the judgments 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