



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

January 11, 2022

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

Mark A. Schoenfeldt
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Jacob J. Wittwer
Assistant Attorney General
Electronic Notice

John D. Flynn
Electronic Notice

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

2021AP387-CR

State of Wisconsin v. Brandon L. Thomas (L.C. # 2018CF3763)

Before Brash, C.J., Donald, P.J., and White, 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).

Brandon L. Thomas appeals a judgment of conviction, following a guilty plea, of one count of armed robbery by use of force as a party to the crime. Thomas also appeals from the order denying his postconviction motion for resentencing. Thomas contends that the circuit court relied upon inaccurate inferences when determining Thomas's sentence. Upon review, we affirm.

On August 10, 2018, the State charged Thomas with one count of armed robbery with the use of force as a party to a crime. The charges stemmed from a home invasion which took place on July 11, 2017, during which Thomas and two co-actors entered a home, held the two residents

at gunpoint and stole multiple items. One of the co-actors shot one of the residents, resulting in the resident's death.

Thomas agreed to testify against his co-actors and ultimately pled guilty to the charge. The circuit court accepted Thomas's plea and ordered the Department of Corrections to prepare a presentence investigation report (PSI).

At sentencing, Thomas exercised his right of allocution, telling the circuit court, as relevant to this appeal, that he was sorry for his "mistake" and "bad decision," that he is "not a bad person," and that he "wish[ed] [he] was never put in the position that [he] was put in[.]" Thomas also told the court that he had goals for the future and that he had become a "better person ... mak[ing] smarter decisions[.]"

The circuit court sentenced Thomas to seven years of initial confinement and five years of extended supervision. In rendering its decision, the circuit court addressed numerous factors, including the PSI writer's assessment that "Thomas tends to not take the fullest responsibility for his conduct." The circuit court also noted that Thomas deflected blame in his statement to the court, stating that Thomas "said he's had a lot of time to think about the position that he was placed in, putting it in a passive voice, as if it just kind of happened to him, you know, instead of that he made the voluntary choice to assist these two guys." The circuit court also addressed numerous positive factors, stating that Thomas was not "a bad person," and that "his background and character for the most part are very positive."

Thomas filed a postconviction motion alleging that the sentencing court erroneously exercised its discretion by determining that he failed to take responsibility for his involvement in the crime. The postconviction court denied the motion. This appeal follows.

Thomas argues that the circuit court “erroneously exercised [its] discretion by imposing an excessive sentence where the circuit court’s sentencing remarks show that the court relied on inferences not supported by the record.” Specifically, Thomas contends that “[i]t is clear that the court viewed the defendant’s characterization of his actions as, in some respect, a shirking of responsibility.” Thomas argues that the circuit court’s assessment of him` was inaccurate and not supported by the record.

It is a well settled principle of law that sentencing is committed to the circuit court’s discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. On review, we afford the circuit court a strong presumption of reasonability, and if discretion was properly exercised, we follow “a consistent and strong policy against interference” with its determination. *See id.*, ¶18 (citation and quotation marks omitted). In fashioning a sentence, the circuit court must consider the gravity of the offense, the character of the offender, 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 weight to be given to each factor is committed to the circuit court’s sound discretion. *Id.* We will sustain an exercise of sentencing discretion if the record reflects that the circuit court applied the proper legal standards, considered the relevant facts, and used a process of reasoning to reach a result that a reasonable judge could reach. *See State v. Cummings*, 2014 WI 88, ¶75, 357 Wis. 2d 1, 850 N.W.2d 915.

It is also a well settled principle of law that “[a] defendant has a constitutionally protected due process right to be sentenced upon accurate information.” *State v. Tjepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. A defendant seeking resentencing due to the circuit court’s use of inaccurate information must show by clear and convincing evidence that the information was inaccurate and the circuit court actually relied on the inaccurate information when imposing

its sentence. *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis.2d 39, 756 N.W.2d 423. “Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews *de novo*.” *Tiepelman*, 291 Wis. 2d 179, ¶9.

Here, Thomas does not argue that the circuit court relied on inaccurate *factual* information. The crux of his argument is that the circuit court drew inaccurate *inferences* about his character and acceptance of responsibility for his actions. We agree with the State that the entirety of the circuit court’s remarks at the sentencing hearing do not reflect a view that Thomas took no responsibility for his actions; rather, the court made a limited determination that Thomas did not accept the fullest responsibility. The court’s inference is supported both by Thomas’s own statement at sentencing and the PSI, which stated that Thomas did not seem to understand the gravity of his actions and was “unlikely to accept responsibility for his actions and may minimize the seriousness and consequences of his criminal behavior.”

Moreover, the record confirms that the circuit court properly exercised its discretion by applying the primary sentencing factors and providing a rational explanation for the sentence imposed. The circuit court discussed the violent nature of the crime, the importance of deterrence, the need to protect the community, the many positive aspects of Thomas’s character, as well as the fact that Thomas had multiple opportunities to turn himself in after the offense but failed to do so. The circuit court identified proper objectives, considered relevant factors, and imposed a sentence well within the range authorized by law. Accordingly, we conclude that the circuit court properly exercised its sentencing discretion on the record. For the foregoing reasons, we affirm the judgment and order denying postconviction relief.

IT IS ORDERED that the judgment 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