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DISTRICT I

June 7, 2022

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

2021AP1226-CR State of Wisconsin v. Jessie James
(L.C. # 2016CF4202)

Before Brash, C.J., Dugan 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).

Jessie James appeals from a judgment of conviction entered after he pled guilty to second-degree reckless homicide by use of a dangerous weapon. He also appeals from an order denying postconviction relief. He claims that the trial court erroneously exercised its sentencing discretion and imposed an unduly harsh and unconscionable sentence. 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 reject James's arguments and summarily affirm.

On September 12, 2016, James, then sixty-one years old, fatally shot Mannix Franklin, Jr., the twenty-one-year old son of James's girlfriend. According to the criminal complaint, Franklin had been living in James's home and returned there on the evening of the incident. Franklin and James argued, and James told Franklin to leave the home because he was being disrespectful. Franklin refused to leave. James then retrieved a shotgun from the bedroom, loaded the gun, and cocked it several times. Franklin said that James would not "do a damn thing," whereupon James shot Franklin. Franklin died shortly thereafter. James told police at the scene that he "felt he was being disrespected in his own house." The State charged James with first-degree reckless homicide by use of a dangerous weapon.

Pursuant to a plea agreement, James pled guilty to an amended charge of second-degree reckless homicide by use of a dangerous weapon, an offense carrying maximum penalties of thirty years of imprisonment and a $100,000 fine. *See* WIS. STAT. §§ 940.06(1), 939.50(3)(d), 939.63(1)(b) (2015-16). At sentencing, the State asked the trial court to impose the maximum term of imprisonment in light of the gravity of the offense. Franklin's mother spoke and described her horror at seeing her boyfriend shoot her son. She also revealed that Franklin's own son was due to be born in a few weeks, and she discussed the profound loss that she felt personally, and that the unborn child would also endure. She joined the State's request for a maximum sentence. James sought a fifteen-year term of imprisonment. In support, he emphasized his age, his physical limitations, and his lack of a significant prior criminal record. The trial court followed the State's

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

recommendation and imposed a maximum term of imprisonment, bifurcated as twenty years of initial confinement and ten years of extended supervision.

James moved for postconviction relief, requesting sentence modification on the grounds that the trial court erroneously exercised its sentencing discretion and that his sentence was unduly harsh and unconscionable. The motion was unsuccessful, and James appeals.

In this court, James renews the sentencing challenges that he raised in his postconviction motion. Our standard of review is well-settled and places a heavy burden on a convicted defendant. Sentencing lies within the sound discretion of the trial court, and appellate review is limited to considering whether discretion was erroneously exercised. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. This court has a "duty to affirm a sentence on appeal if from the facts of record the sentence is sustainable as a proper discretionary act." ***State v. Hall***, 2002 WI App 108, ¶6, 255 Wis. 2d 662, 648 N.W.2d 41 (citation and brackets omitted).

The sentencing court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, 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 sentencing court may also consider a broad range of additional factors, including:

> (1) [p]ast record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant's personality, character and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant's culpability; (7) defendant's demeanor at trial; (8) defendant's age, educational background and employment record; (9) defendant's remorse, repentance and cooperativeness; (10) defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention.

See ***Gallion***, 270 Wis. 2d 535, ¶43 & n.11 (citation omitted). The sentencing court has discretion to determine both the factors that are relevant in imposing sentence and the weight to assign to each relevant factor. *See* ***State v. Stenzel***, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. In assessing those discretionary decisions, we do not require the use of "magic words." *See* ***State v. Ziller***, 2011 WI App 164, ¶13, 338 Wis. 2d 151, 807 N.W.2d 241. The sentencing court must address the appropriate sentencing factors but need not recite them. *See* ***State v. Odom***, 2006 WI App 145, ¶25, 294 Wis. 2d 844, 720 N.W.2d 695.

The sentencing court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40. Additionally, the sentencing court must explain the "linkage" between the sentencing objectives and the sentence selected but is not obligated to explain a sentence with mathematical precision. ***Id.***, ¶¶46, 49. Rather, we expect "an explanation for the general range of the sentence imposed." ***Id.***, ¶49.

In this case, the sentencing court determined that punishment was the primary goal of the sentence and discussed the factors that the court viewed as relevant to the sentencing decision. The sentencing court lamented that the crime had ended the life of a young man "barely two decades old" and described the offense as "serious," "unthinkable," and "tragic." The sentencing court viewed James's character as largely mitigating, finding that James appeared to be a "caring and giving person" who had generously shared his home with Franklin. As to the need for public protection, the sentencing court found that James had displayed errors in judgment by needlessly "introduc[ing] a gun into a situation ... to demand respect," and the trial court expressed particular concern about the "deliberative steps" that James took to load and cock his gun before shooting it.

Additionally, the sentencing court found that James alone was culpable for the crime, that his actions were entirely unjustified, and that by cutting short the life of a young man, James had affected the lives of "everyone that is connected and bound by the relationship" to Franklin, including his mother and his unborn child.

James first faults the sentencing court for not explicitly discussing his age and life expectancy. As he acknowledges, however, the sentencing court was not required to consider those matters. *See* ***Stenzel***, 276 Wis. 2d 224, ¶20. The sentencing court's omission therefore was not an error, and James fails to explain why the omission entitles him to any relief.

Second, and relatedly, James complains that the sentencing court placed too much weight on the need for punishment and not enough weight on his age and character. However, the weight to assign to the sentencing factors lies in the discretion of the sentencing court, not this court. *See* ***id.***, ¶16. While the sentencing court did not give James's age and character the determinative weight that he would have preferred, that is not an erroneous exercise of discretion. *See* ***State v. Prineas***, 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206 (explaining that "our inquiry is whether discretion was exercised, not whether it could have been exercised differently").

Third, James asserts that the sentencing court did not "discuss why a sentence of lesser duration would not have been adequate," and he contends that ***Gallion*** mandates such a discussion. We reject this contention. ***Gallion*** provides that a sentencing court must "provide a 'rational and explainable basis' for the sentence." ***Id.***, 270 Wis. 2d 535, ¶39 (citation omitted). Wisconsin law, however, "does not require a sentencing court 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.

Fourth, James argues that the sentencing court erred because "it made no mention of probation as it was required to do under ***Gallion***." We again disagree. ***Gallion*** does not require a sentencing court to "mention" probation. *See* ***id.***, 270 Wis. 2d 535, ¶49 (explaining that the decision is not "a call for more 'magic words'"). Rather, ***Gallion*** reaffirms the long-standing "concept that probation should be considered as the first alternative" and should be imposed unless the sentencing court finds that, *inter alia*, "it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed." ***Id.***, ¶25 (citation omitted). Here, the sentencing court did not make an explicit mention of probation, but the sentencing court did unambiguously apply the ***Gallion*** analysis, rejecting a probationary disposition by finding that "a sentence to the Wisconsin state prison system is necessary ... to impose a period of retribution given the loss of life that has occurred." The sentencing court therefore did not err.

Last, James asserts that his sentence was unduly harsh and unconscionable. We review a sentence challenged as unduly harsh and unconscionable for an erroneous exercise of discretion. *See* ***State v. Grindemann***, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. When we consider such a challenge, we will hold that the sentencing court erroneously exercised its discretion "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Id.***, ¶31 (citation omitted).

James contends that his sentence is unduly harsh and unconscionable because a thirty-year term of imprisonment for a sixty-one-year-old defendant is "tantamount to a sentence of life imprisonment, which is normally available only for those convicted of first-degree intentional homicide." The sentence selected here, however, was a lawful one that did not exceed the maximum allowed for the offense that James committed.

> Although we recognize that trial courts should impose "'the minimum amount of custody'" consistent with the appropriate sentencing factors, "minimum" does not mean "exiguously minimal," that is, insufficient to accomplish the goals of the criminal justice system—each sentence must navigate the fine line between what is clearly too much time behind bars and what may not be enough.

State v. Ramuta, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 (citation omitted).

Here, the sentencing court determined that twenty years of initial confinement and ten years of extended supervision was necessary for James's crime, a senseless act in which he took the life of a blameless young man. The sentence is neither shocking, nor disproportionate. Accordingly, we affirm.

IT IS ORDERED that the judgment of conviction and postconviction 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