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 III

June 22, 2022

To:

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Circuit Court Judge
Electronic Notice

Marge Kelsey
Clerk of Circuit Court
Sawyer County Courthouse
Electronic Notice

Nicholas DeSantis
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Bruce R. Poquette
Electronic Notice

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

2021AP657-CR State of Wisconsin v. Jerry Wayne True (L. C. No. 2018CF74)

Before Stark, P.J., Hruz and Gill, 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).

Jerry True appeals a judgment of conviction for four counts of threatening to cause bodily harm to the person or family member of a judge or prosecutor, in violation of WIS. STAT. § 940.203(2) (2019-20),[1] as well as an order denying his motion for postconviction relief. True argues that the sentence imposed by the circuit court is unduly harsh and excessive. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for

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

summary disposition. *See* WIS. STAT. RULE 809.21. We reject True's arguments and summarily affirm.

We briefly recount the background of this case, focusing on True's history of threatening conduct, as well as the details of the threats that led to the present appeal. According to the criminal complaint, during 2015 and 2016, True was a defendant in two cases, one misdemeanor and one felony, brought in Sawyer County Circuit Court. In each proceeding, True pled guilty to using a computer communications system to threaten harm or injury.

The 2015 misdemeanor charge was based on a text message True sent to his ex-wife stating that he would have her child taken away and that he would cut the throat of her companion and blow up his truck. This case was prosecuted by District Attorney Bruce Poquette and Assistant District Attorney Aaron Marcoux. The 2016 felony charge was based on two Facebook posts made by True. Specifically, True had made a post on the Sawyer County Sherriff's K-9 Facebook page directed to the "Sawyer county police department and law enforcement and Wisconsin drug task force" stating, "[B]ack off or pay the price" and "I will put you in the ground." True had also posted on his Facebook page that a person who had been taken into custody during a narcotics raid was "first on my list to die." This 2016 case was prosecuted by District Attorney Bruce Poquette. Both cases were presided over by Judge John Yackel, who ultimately withheld sentence and imposed three years' probation.

In 2017, True's probation was revoked because he had violated the conditions of his probation by using the internet to threaten members of a Facebook group for single pregnant women. Among other things, True told a woman that he would make her into barbecue and a

stew and that he has no problems killing people. He also stated that he would hunt down her and her family and that he would find her through her computer's IP address.

While True was in jail awaiting sentencing on the probation revocation, he made the threats that led to his conviction and sentence in the present case. In a letter to a friend, True wrote:

> Judge Yackel and the D.A. and the Sawyer County Jail and Probation and Parole. They keep moving my sentencing date back now So I wait. Well they are sending me to prison for 2 years so I guess God is not so good as you all think so now I can go to prison then I will come out and hunt down Judge Yackel and Poquette and Marcoux ….[2] They ruined my life I'm taking theirs. I guess the Judge and DA is Racist and I am going to Blow up the Courthouse and the Jail. I am also going to Blow up the Dept. of Correct to. They want to give me 2 years they better give me life in Prison without parole. I am also going to Re-offend again and I have a List of who I'm going to do first. Judge Yackel's family first then others. I plan on not coming home anytime soon.

The letter was intercepted by jail staff.

The State charged True with four counts of violating WIS. STAT. § 940.203(2), which prohibits threats of bodily harm to judges, prosecutors, law enforcement officers, and their families. Each count carried a maximum sentence of six years. In addition, True faced a sentence enhancer as a habitual offender, bringing the maximum sentence for each count to ten years. A jury found True guilty of all four counts.

At the sentencing hearing, the circuit court heard testimony from Judge Yackel about the effect of True's threats on both his family and the courthouse staff. The court also heard a

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[2] True also named two additional individuals. The charges filed against True, however, only related to the threats to the judge and his family, the district attorney, and the assistant district attorney.

statement from a friend of True, who appeared by telephone. Finally, True made a statement requesting less than the maximum sentence, explaining that he was sorry and pointing to his good qualities, such as providing the grill and food for friends' cookouts and helping to remodel his brother's house.

The circuit court ultimately imposed the maximum sentence of seven years' initial confinement followed by three years' extended supervision for each of the four counts, to run consecutively to each other. True filed a postconviction motion seeking resentencing. True argued that the maximum sentence should be reserved for defendants who confronted their victims with verbal threats or made anonymous threats. In contrast, True argued that his threats were not deserving of the maximum punishment because he had made his threats in a letter that was not addressed to the victims and that was intercepted at the jail. Accordingly, True contended that the sentence imposed was "shocking and ought to be reduced."

Following a hearing, the circuit court denied True's postconviction motion. The court explained that True's argument that his threats were not directed at the victims themselves was not "the most compelling here," due to the fact that True had made the threats in a letter from jail. In light of that context, "the threats were going to be articulated out." In addition, the court explained that True's history—namely, "a fairly noticeable and profound prior record," together with "other evidence of … undesirable behavior and bad acts"—was significant to its sentencing decision. Although the court would have imposed a shorter sentence if True had "no prior record, or a very minimal prior record" and no history of other threats, the court explained that "the facts of his background were screaming at this point to take his threats serious. And that's what the Court did." Finally, the court explained that all of the aggravating factors pointed to the high end of the penalty range, while the mitigating factors were de minimis.

In this appeal, True reiterates his argument that his "sentence is unduly harsh and excessive." He points to ***Ocanas v. State***, 70 Wis. 2d 179, 233 N.W.2d 457 (1975), in which our supreme court stated that a circuit court may not impose a sentence that 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.*** at 185.

A circuit court's sentencing decision is discretionary. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In exercising its discretion, the court "must consider three primary factors in determining an appropriate sentence: the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. "[T]he sentence imposed shall '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, ¶44 (citation omitted).

The circuit court may modify a sentence if it "determines that the sentence is unduly harsh or unconscionable." ***State v. Cummings***, 2014 WI 88, ¶71, 357 Wis. 2d 1, 850 N.W.2d 915. "[W]e will not disturb the exercise of the circuit court's sentencing discretion so long as 'it appears from the record that the court applied the proper legal standards to the facts before it, and through a process of reasoning, reached a result which a reasonable judge could reach.'" ***Id.***, ¶75 (citation omitted).

Here, the record shows that the circuit court considered the three primary factors when determining True's sentence. *See* ***Harris***, 326 Wis. 2d 685, ¶28. Regarding the gravity of the

offense, the court explained that "[a]ll threats of this type of violence should be taken seriously," and even more so when the threats involve public officials. Specifically, the court expressed concern about the effect that these sorts of threats have on the judges and prosecutors who are tasked with administering "fair and unbiased justice," describing that effect as "a chill on the human" as well as "a chill on the system." The court further explained that the words that True had used to make his threats—such as "hunt you down," "kill your family," and "[b]low up the courthouse"—were "frightening" and terrifying to all of the victims.

Regarding the character of the offender, the circuit court considered True's prior record, which it described as "bad" and "serious." In addition, the court considered True's "history of undesirable behavior," and particularly "[t]he amount of threats and the significance of the threats that [True made] over a long period of time." The court deemed this history "shocking … absolutely shocking." Although the court also considered positive information about True's character, such as the fact that he helped his brother remodel his house and that he helped family and friends with cookouts, the court described these good qualities as "de minimis" when balanced against the violent threats that True had made.

Regarding the need to protect the public, the circuit court expressed concern about the level of detail in True's threats, explaining that True appeared to have a plan to carry out his threats against people, children, and municipal buildings. In turn, the existence of a plan indicated a likelihood that True would follow through with these threats. The court explained that True had "laid out the warning signs like billboards at a casino" and emphasized the importance of taking these warning signs seriously. The court further noted that, in the context of threats to public officials, protecting the community also required it to consider the detrimental effect that threats have on the criminal justice system as a whole. The court reasoned

that "[i]t's hard enough to get people of good conscience to want to take on a public position," and "[y]ou just made that job a lot harder." As such, the court explained that "these types of actions go right to the heart of the need to protect society."

Alongside the factors specified in ***Gallion***, the circuit court also considered the need to deter others from engaging in similar conduct. The court explained that the "antisocial nature" of the people who engage in these types of threats means that "punishment doesn't quite deter them in the way it does for other types of people." Accordingly, the court wanted to impose a sentence that would "get[] to the point that they truly see that it matters and that they're not going to look at it as some type of a virtual slap on the hand."

The circuit court also considered whether its sentence would serve True's rehabilitative needs. The court observed that True had been sentenced to probation in the past and did not seem to have any real desire for another probationary sentence. Instead, True had stated that "he just want[ed] to be left alone." Based on True's lengthy history of responding to problems by making violent threats that "exaggerate[] the problem exponentially," the court concluded, "Nothing in your history so far tells me you can rehabilitate." Accordingly, the court concluded that state prison was appropriate because "at least you'll be controlled there."

True does not argue that the circuit court overlooked any necessary factors in crafting its sentence, nor does True argue that the court considered any improper factors. Instead, True argues that the sentence is disproportionate to his offenses based on the way in which he made the threats. In particular, True focuses on the fact that he did not make any of his threats directly to the objects of his threats. He argues that "a reasonable person would conclude that

twenty-eight years confined in prison is just too much for a letter that was never even sent to the threatened people."

We reject True's argument for three reasons. First, True's assertion that "he never meant for those threats to reach the judge and the others" is not supported by the record. True made these threats in a letter sent from jail, with awareness that jail staff read inmates' letters. Thus, even though True did not send a letter directly to his intended targets, he was aware that the letter would be intercepted, which in turn made it likely that the named individuals would learn of the threats against them, their families, and their workplaces. Indeed, the circuit court rejected True's argument explicitly during the sentencing hearing, when it explained that "Mr. True is not a stupid man" and that he knew "darn well that the Sheriff's office reads the correspondence going out."

Second, in focusing solely on the nature of his offenses, True's argument overlooks the significant role that his character played in the circuit court's decision to impose the maximum sentence. At sentencing, the court explained that it would probably have approached sentencing differently for "an emotionally-strapped 17 year old boy that does what Mr. True did." In this case, however, the court was dealing with "a 45 year old grown man with a long history of threats." Accordingly, the court reasoned that an appropriate sentence had to take into account True's background and characteristics. The court reiterated the significance of True's background during the hearing on the postconviction motion, explaining that "the sentence would be significantly less" if True had "no prior record, or a very minimal prior record, no history … in prison, no other threats that might be out there."

Third, and relatedly, True's argument overlooks the other factors that the circuit court considered in crafting an appropriate sentence, including the need to protect the public, the need to deter others, and True's rehabilitative needs. As the court explained at the hearing on the postconviction motion, it imposed the maximum sentence because, after it "weighed all of the circumstances and all of the ***Gallion*** factors … if this one didn't reach to at or near the maximum sentence, I don't know why the maximum sentence would be where it is." We are therefore unpersuaded by True's argument that one factor—the nature of his offenses—compelled a below-maximum sentence.

In sum, we reject True's argument that the sentence imposed "violates the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***Ocanas***, 70 Wis. 2d at 185. Instead, it is apparent from the record that the circuit court acted within its sentencing discretion by applying the proper legal standards to the facts before it and reaching a result that a reasonable judge could reach. *See* ***Cummings***, 357 Wis. 2d 1, ¶75. We therefore conclude that the court did not erroneously exercise its sentencing discretion. *See* ***Gallion***, 270 Wis. 2d 535, ¶77 (affirming a sentence because the circuit court gave "an adequate explanation for the sentence given, used relevant information regarding the character of the victim, and imposed a sentence that was neither harsh nor excessive").

Upon the foregoing,

IT IS ORDERED that the judgment and order 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