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**DISTRICT I**

July 6, 2022

*To*:

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

2021AP660-CR State of Wisconsin v. Dante D. Ashley (L.C. # 2015CF526)

Before Brash, C.J., Donald, P.J., and Dugan, 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).**

Dante Ashley appeals a judgment of conviction, following a jury trial, of one count of armed robbery and one count of attempted armed robbery. 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.

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

On January 21, 2015, the State charged Ashley with one count of armed robbery, one count of attempted armed robbery, and one count of misdemeanor possession of marijuana.[2] According to the complaint, Ashley approached one victim at a gas station, displayed a gun, and stole the victim's Jeep Cherokee. Ashley then attempted to do the same thing at a second gas station, but the victim refused to hand over his keys. Ashley fled in the stolen Jeep.

When police eventually stopped the Jeep and arrested Ashley, they recovered a handgun and marijuana. Ashley told police the gun was not loaded. The complaint further states that police advised Ashley of his ***Miranda***[3] rights. Ashley waived those rights and admitted to taking the Jeep, attempting the theft of the second vehicle, and possessing marijuana.

The trial court ordered Ashley to undergo a competency evaluation. On April 24, 2015, Dr. Deborah Collins found Ashley competent to assist in his defense and proceed in the criminal proceedings. At a hearing the following month, defense counsel requested another evaluation based on her interactions with Ashley. The trial court ordered another evaluation. Dr. Collins again evaluated Ashley, this time finding that while Ashley was factually aware of the charges, "his rational appreciation of potential prosecutorial evidence is in question." Dr. Collins recommended an in-patient evaluation. Following an in-patient evaluation, Dr. Elliot Lee found Ashley competent to proceed. At a hearing following the return of the report, neither defense counsel nor Ashley expressed a desire to challenge Dr. Lee's report.

[2] The marijuana possession charge was later dismissed.

[3] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

At the following hearing, defense counsel requested an evaluation for the purpose of pursuing a defense of not guilty by reason of mental disease or defect (NGI). Dr. John Pankiewicz evaluated Ashley and "did not find evidence to opine to a reasonable degree of medical certainty that he lacked substantial capacity to appreciate the wrongfulness of his acts or conform his behavior to the requirements of the law."

Ashley later moved to suppress his statements to the police while in custody, alleging that he was not competent to waive his right to remain silent. The trial court denied the motion, stating that it listened to the statements to police, that Ashley responded appropriately to the questions, and that the court did not hear anything "unusual." The trial court further discussed the competency evaluations, noting that while Ashley "has some challenges," "there was nothing … that would suggest to me that [he] could not, in effect, give a voluntary statement."

A few months later, defense counsel again expressed some concern over Ashley's competency and asked the trial court to order another evaluation. The trial court agreed and ordered Dr. Collins to conduct another competency evaluation. Dr. Collins determined that Ashley "is not presently rendered to lack substantial mental capacity to understand the pending proceedings or aid in his behalf." At a hearing on the report, defense counsel told the court that Ashley agreed "that he is competent at this time." Counsel also requested an evaluation for an NGI plea.

Dr. Mary Kay Luzi evaluated Ashley for the purpose of pursuing an NGI plea. Dr. Luzi opined that

> there is insufficient support to sustain a conclusion that specifically and as a result of [his mental health] condition, Mr. Ashley was rendered substantially lacking in his capacity to appreciate the

> wrongfulness of his alleged conduct or to conform his conduct to the requirements of the law with respect to the alleged offense.

(Emphasis omitted.) At a hearing reviewing the report, the trial court found:

> Dr. Luzi concludes in her report that there's insufficient support to sustain a conclusion that as a result of Mr. Ashley's situation that he was rendered substantially lacking in his capacity to appreciate the wrongfulness of his alleged conduct or to conform his conduct to the requirements of the law with respect to the alleged offense.

Defense counsel then informed the court that Ashley wanted a speedy trial and asked to withdraw the request for an NGI plea. But at the final pretrial, defense counsel reversed course and informed the court that Ashley wanted to plead "not guilty and not guilty by reason of mental disease or defect."

The matter proceeded to a two-phased NGI trial. The jury ultimately found Ashley guilty of the two charges and rejected his NGI defense. The trial court sentenced Ashley to eight years of initial confinement, followed by six years of extended supervision.

On appeal, Ashley raises a number of issues. He contends that: (1) he was not competent to stand trial; (2) the trial court erred in denying his motion to suppress; (3) the trial court erroneously exercised its sentencing discretion; and (4) there was insufficient evidence to support the jury's NGI verdict. We address each issue.

At the outset, we note that the State contends that Ashley has forfeited the first three arguments for failure to raise them in a postconviction motion. The forfeiture inquiry is "whether a legal argument or theory was raised before the circuit court, as opposed to being raised for the first time on appeal in a way that would 'blindside' the [trial] court." ***Townsend v. Massey***, 2011 WI App 160, ¶25, 338 Wis. 2d 114, 808 N.W.2d 155 (citation omitted). Though we need not address arguments raised for the first time on appeal, *see* ***State v. Caban***, 210

Wis. 2d 597, 604, 563 N.W.2d 501 (1997), we will address Ashley's arguments on the merits for the sake of completeness.

Turning first to Ashley's argument that he was incompetent to stand trial, we note that "[a] competency determination is functionally a factual finding." *See* ***State v. Smith***, 2016 WI 23, ¶26, 367 Wis. 2d 483, 878 N.W.2d 135. As such, we will affirm the trial court's determination that a defendant is competent to stand trial unless the finding "is totally unsupported by facts in the record and, therefore, is clearly erroneous." *See* ***id.***, ¶29.

Here, the trial court reviewed multiple competency reports, conducted at various stages of the proceedings, most of which determined that Ashley was competent to stand trial. Indeed, Ashley expressly told the trial court he was competent to proceed to trial. In reviewing the evaluations as well as Ashley's own admission, the trial court properly exercised its discretion in finding Ashley competent to stand trial.

We next conclude that the trial court did not erroneously exercise its discretion in denying Ashley's motion to suppress statements made to police following his arrest. "Whether evidence should be suppressed is a question of constitutional fact." ***State v. Brooks***, 2020 WI 60, ¶7, 392 Wis. 2d 402, 944 N.W.2d 832 (citation omitted). We review the trial court's findings of historical fact under the clearly erroneous standard, but the application of constitutional principles to those facts presents a question of law that we review independently. *See* ***id.***

The basis of Ashley's argument is that he was not competent to make a knowing and voluntary admission to police while in custody. At the suppression hearing, the trial court listened to the conversation with Ashley and police, and noted that Ashley had an understanding of his situation and was coherent. The trial court took the competency evaluations into account

and recognized Ashley's mental health challenges, but did not find anything "unusual" about Ashley's interaction with police. The trial court properly exercised its discretion.

As to Ashley's sentence, Ashley contends that the trial court erroneously exercised its discretion by imposing an unduly harsh sentence in light of Ashley's mental health conditions.

Sentencing is committed to the trial court's discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In seeking to fulfill the sentencing objectives, the trial court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. On appeal, our review is limited to determining whether the circuit court's discretion was erroneously exercised. *See* ***Gallion***, 270 Wis. 2d 535, ¶17. Accordingly, we review the 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. A sentence is unduly harsh "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). "A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh[.]" ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

There is no doubt that a defendant's mental health can be an important sentencing consideration, *see* ***Gallion***, 270 Wis. 2d 535, ¶43 n.11, and the record provides no reason for us to think that the trial court doubted the serious nature of Ashley's reported mental health concerns. While the trial court recognized Ashley's mental health concerns, it noted that the jury found Ashley to be aware of the wrongfulness of his conduct. The trial court placed emphasis on the gravity of the offenses, noting that Ashley was armed and caused trauma for the victims. The trial court also discussed the need to protect the community. The trial court also stated that Ashley's crimes were "punishable for up to sixty [] years." Ashley received a sentence of eight years of initial confinement, followed by six years of extended supervision—well below the maximum. We conclude that the trial court reasonably exercised its discretion and did not impose an unduly harsh punishment.

Lastly, Ashley contends that there is insufficient evidence to support the jury's NGI verdict. We reject Ashley's argument as being undeveloped and conclusory. Ashley does not identify specific evidence that contradicts the jury's verdict, or law that supports his vague claim. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). We will not address inadequately developed arguments.

For the foregoing reasons, we affirm the trial court.

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*
*Clerk of Court of Appeals*