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 IV

September 22, 2022

To:

Hon. Josann M. Reynolds
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Loryn Lange Limoges
Electronic Notice

Mark A. Schoenfeldt
Electronic Notice

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

2021AP1595-CR State of Wisconsin v. Larence G. Thomas (L.C. #2019CF2386)

Before Blanchard, P.J., Kloppenburg, and Nashold, 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).

Larence Thomas appeals a judgment of conviction for second-degree intentional homicide, as party to a crime. He also appeals the circuit court's order denying his postconviction motion for resentencing. Thomas argues that the circuit court erroneously exercised its sentencing discretion by predetermining his sentence. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).[1] We affirm.

---

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

Thomas entered a guilty plea to the homicide charge. The circuit court ordered a presentence investigation, and Thomas's sentencing occurred at a later date. The court sentenced Thomas to a prison term consisting of twenty-five years of initial confinement and ten years of extended supervision.

"Sentencing is committed to the discretion of the trial court, and our review is limited to determining whether the trial court erroneously exercised its discretion." ***State v. Trigueros***, 2005 WI App 112, ¶5, 282 Wis. 2d 445, 701 N.W.2d 54. "There is a strong public policy against interfering with the trial court's sentencing discretion, and the trial court is presumed to have acted reasonably." ***Id.***

Thomas acknowledges our deferential standard of review. He argues, however, that the circuit court erroneously exercised its discretion by predetermining, at his plea hearing, that he would receive a prison sentence, without first considering the possibility of probation as case law requires. *See* ***State v. Gallion***, 2004 WI 42, ¶44, 270 Wis. 2d 535, 678 N.W.2d 197 ("[C]ircuit courts should consider probation as the first alternative."). According to Thomas, the record shows that the court decided during his plea hearing that Thomas would be receiving a prison sentence, regardless of the results of the presentence investigation or any arguments at the sentencing hearing. Thomas points to a statement the court made toward the end of his plea hearing, when discussing whether to hold the sentencing hearing in person despite the COVID-19 pandemic. The court stated:

> [I]f at all possible, it will [be in person]. I've only had one case where I sent the defendant to prison and it was in person. I think that if somebody is going to prison, they should be physically present in front of the judge. And that is my intention barring some unforeseen development with the pandemic, and who knows what tomorrow brings but that would be my intention.

Thomas argues that the court's statement shows that the court had already made up its mind to impose a prison sentence rather than remaining open to the possibility of probation.

The State contends that the circuit court's statement, when considered in the context of the entire record, does not show that the court predetermined Thomas's sentence. The State argues that the record instead shows that the court reasonably exercised its discretion by imposing an individualized sentence based on relevant sentencing factors and Thomas's particular circumstances.

We agree with the State for two reasons. First, when we consider the court's "if somebody is going to prison" statement in the context of the rest of the plea hearing, we conclude that the statement is most reasonably read as an acknowledgment that a prison sentence was a likely possibility, not as proof that the court had already made up its mind to impose a prison sentence. The court explicitly stated at the plea hearing that "today we are only taking the plea and we are not determining the disposition." Also, when discussing its order for a presentence investigation, the court stated that a sentencing recommendation from the department of corrections would provide "one more piece of insight and information that I utilize in determining the ultimate disposition."

Second, the circuit court's subsequent statements during Thomas's sentencing hearing confirm that the court had not predetermined Thomas's sentence and instead properly exercised its sentencing discretion. At the outset, the court's remarks showed that it was considering the new information it had learned since the time of the plea hearing. The court then went on to discuss relevant sentencing factors as applied to the particular circumstances of Thomas's case. Ultimately the court concluded that the prison term it was imposing was "an adequate time of

confinement based on [Thomas's] total history, the record that was made here today, and the carefully considered reports of both PSI writers."

Thomas points out that during his sentencing hearing the circuit court did not expressly mention the possibility of probation. He argues that the absence of any reference to probation is evidence that the court predetermined his sentence. We disagree, especially considering that Thomas did not ask the court to consider probation; the defense instead recommended a prison sentence consisting of twelve years of initial confinement and five years of extended supervision. Thomas cites no authority that requires sentencing courts to expressly discuss probation in all cases. He relies on ***Gallion***, which states that "circuit courts should consider probation as the first alternative" and that "[p]robation should be the disposition unless: confinement is necessary to protect the public, the offender needs correctional treatment available only in confinement, or [probation] would unduly depreciate the seriousness of the offense." *See* ***Gallion***, 270 Wis. 2d 535, ¶44. Here, the court's explanation of its reasons for imposing a prison sentence was more than adequate to explain why the court concluded that probation was not an appropriate disposition.

Therefore,

IT IS ORDERED that the circuit court's judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals