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DISTRICT I

November 22, 2022

To:

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Circuit Court Judge
Electronic Notice

Kieran M. O'Day
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

John J. Cook Jr. 338708
Prairie Du Chien Correctional Inst.
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Prairie du Chien, WI 53821

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

2021AP376-CR

State of Wisconsin v. John J. Cook, Jr. (L.C. # 2016CF5407)

Before Donald, P.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).

John J. Cook, Jr., *pro se*, appeals from an order denying his postconviction motion for sentence modification or resentencing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

In 2016, the State charged Cook with one count of first-degree recklessly endangering safety with use of a dangerous weapon and one count of possession of a firearm by a felon. The

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

State later amended the charges to add one count of endangering safety by firing a gun from a car. According to the complaint, on November 30, 2016, an altercation occurred outside of the Milwaukee County Safety Building between Cook and his son, J.R., while Cook was inside of his car. A witness reported that J.R. threw a punch inside Cook's car. The witness then saw Cook pull out a gun and fire two shots toward J.R. The witness "saw J[.]R[.] fall down, get back up, and run north on [North] 9th Street." During an interview with law enforcement, Cook admitted to being a convicted felon, having a verbal argument with J.R., and shooting toward J.R. with a .40 caliber pistol. The matter proceeded to trial, where a jury found Cook guilty as charged.

At the sentencing hearing, the State detailed the events leading up to the shooting, Cook's criminal record, and the gravity of the offenses. The trial court cumulatively sentenced Cook to fifteen years of imprisonment, bifurcated as nine years initial confinement and six years extended supervision for the three offenses. The trial court imposed the three individual sentences consecutively. In rendering its decision, the trial court emphasized "the protection of public aspect," discussing the underlying reason for felon in possession laws. The trial court also discussed certain mitigating factors, the fact that Cook was using a stolen gun, and the nature and gravity of the offense.

Cook, *pro se*, filed a postconviction motion seeking sentence modification or resentencing on the grounds that the trial court erroneously exercised its sentencing discretion and relied on inaccurate information. Specifically, Cook alleged that the trial court failed to explain its reasons for imposing consecutive sentences and that the State incorrectly told the court that he was convicted of two counts of illegally carrying or possessing a firearm in Illinois

in 1997, and that he had two prior convictions for felony bail jumping. Cook argued that he was only convicted of one count of each crime.

The postconviction court² denied the motion without a hearing. In a thorough and detailed written decision, the postconviction court explained its rationale for its sentencing decision and found that Cook had not shown either that the State presented inaccurate information or that the trial court relied on that information. This appeal follows.

On appeal, Cook raises a myriad of issues pertaining to the trial court's sentencing decision. Specifically, he contends that the trial court failed to explain why it imposed consecutive sentences; that the trial court failed to consider mitigating circumstances; and that the trial court relied upon inaccurate information at sentencing. Cook also contends that the postconviction court acted with bias when it denied his postconviction motion. We disagree.

Sentencing is committed to the trial court's discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A defendant challenging a sentence “has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue.” *State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998). We start with a presumption that the trial court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See id.* at 418-19.

Cook contends that the trial court erroneously exercised its discretion by failing to explain why it imposed consecutive sentences. A trial court is not obligated to specifically

² The postconviction court also presided over Cook's trial and sentencing.

explain why it imposed consecutive instead of concurrent terms as long as the court articulates a rationale for the overall sentence. *State v. Berggren*, 2009 WI App 82, ¶¶45-46, 320 Wis. 2d 209, 769 N.W.2d 110. A sentencing court “must provide an explanation for the general range of the sentence imposed, not for the precise number of years chosen, and it need not explain why it did not impose a lesser sentence.” *State v. Davis*, 2005 WI App 98, ¶26, 281 Wis. 2d 118, 698 N.W.2d 823.

At the sentencing hearing, the trial court articulated its reasons for imposing Cook’s specific sentences. The postconviction court further explained its rationale in its order denying Cook’s postconviction motion, focusing specifically on the aggravated nature of Cook’s conduct and the danger that the conduct “presented to the entire community” “because of where and when it occurred.” *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (explaining that a postconviction motion challenging a sentence affords the circuit court an opportunity to further explain the sentencing rationale). In short, the trial court properly articulated its rationale for Cook’s sentences.

We also reject Cook’s claim that the trial court failed to consider mitigating circumstances in rendering its decision. Indeed, the record shows that the trial court explicitly considered mitigating circumstances by acknowledging Cook’s difficult upbringing and the fact that he did not start the altercation or specifically seek out the victim.

The record also does not support Cook’s contention that the trial court relied upon inaccurate information at the sentencing hearing. Cook alleges that (1) the prosecutor presented inaccurate information when he noted that Cook had two prior convictions from Illinois for carrying/possessing a firearm and (2) the prosecutor presented the court with inaccurate

information when he corrected the Presentence Investigation Report to note that Cook had two prior convictions for felony bail jumping in Wisconsin.

“[A] criminal defendant has a due process right to be sentenced only upon materially accurate information.” *Lechner*, 217 Wis. 2d at 419. A defendant who seeks resentencing based on the trial court’s use of inaccurate information must show that the information was inaccurate and that the trial court actually relied on the inaccuracy in the sentencing. *See State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. “Whether the court ‘actually relied’ on the incorrect information at sentencing [is] based upon whether the court gave ‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *Id.*, ¶14 (citation omitted).

We need not delve into the details of the allegedly inaccurate information because it is clear that the trial court did not rely on either the Illinois or bail jumping convictions in rendering its decision. The trial court focused primarily on the gravity of the offense and the danger Cook’s conduct posed to the public. The trial court made no reference to the number of Cook’s prior convictions.

Finally, we reject Cook’s contention that the postconviction court acted with bias when it denied his postconviction motion. Indeed, the postconviction court’s order thoroughly addresses Cook’s arguments, states the proper law, and applies the facts of Cook’s case to that law. Cook simply disagrees with the postconviction court’s decision. Disagreement is not the equivalent of bias.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is 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