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DISTRICT II

November 30, 2022

To:

Hon. Jason A. Rossell
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
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Michael D. Graveley
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Jesse E. Liddell, #678802
Kenosha Correctional Center
6353 14th Ave.
Kenosha, WI 53143

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

2021AP491-CR

State of Wisconsin v. Jesse E. Liddell (L.C. #2018CF852)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Jesse E. Liddell, pro se, appeals a judgment of conviction entered upon his guilty plea to injury by intoxicated use of a motor vehicle as well as an order denying a motion for postconviction relief. Liddell argues that the circuit court erroneously exercised its discretion by considering an improper and irrelevant sentencing factor, namely biblical notions of justice and punishment. He also argues the court failed to arrive at an individualized sentence because it discounted his rehabilitation needs. 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 affirm.

Liddell was arrested on suspicion of operating a motor vehicle while intoxicated. About thirty minutes after being released from police custody for that offense, Liddell drove again. He crashed into another vehicle and seriously injured the other driver, who gave an extensive statement at sentencing about her injuries and the quality of life issues she would experience during her lifetime as a result of that crash.

The court began its sentencing remarks by observing that both the victim and Liddell were fortunate the victim had survived. It noted that biblical conceptions of “perfect justice” were not compatible with the judicial system, remarking to Liddell that “[w]e can’t break your pelvis or break your feet or shove your colon and break your diaphragm [or] trap you in a wheel chair for three month[s] and take away the things that you enjoy doing for the rest of your life.” The court explained that the primary sentencing objectives were deterrence and punishment, and it imposed a sentence consisting of six years’ initial confinement and five years’ extended supervision. The court denied Liddell’s postconviction motion, which challenged the circuit court’s exercise of its sentencing discretion.

We review a circuit court’s sentence for an erroneous exercise of discretion. *State v. Alexander*, 2015 WI 6, ¶16, 360 Wis. 2d 292, 858 N.W.2d 662. The three primary factors the court should consider are the gravity of the offense, the character of the offender, and the need for protection of the public. *Id.*, ¶22; *see also State v. Gallion*, 2004 WI 42, ¶23, 270 Wis. 2d

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

535, 678 N.W.2d 197. The general objectives of greatest importance may vary from case to case. *Id.*, ¶41. A court erroneously exercises its sentencing discretion when it relies on a clearly irrelevant or improper factor, which the defendant must prove by clear and convincing evidence. *Alexander*, 360 Wis. 2d 292, ¶17.

Liddell first argues the circuit court erroneously exercised its discretion by considering an improper and irrelevant sentencing factor, namely biblical conceptions of justice. We conclude the circuit court did not erroneously exercise its sentencing discretion. Regarding the court's observations about biblical justice and "eye for an eye" punishment, the court correctly noted that the modern justice system does not employ that means to address criminal conduct. The victim was terribly injured, and the court was emphasizing that no innocent person merely driving to work should be forced to suffer in the manner that the victim did. The court was explicit that any attempt to achieve a biblical conception of "perfect justice" was bound to fail as that form of redress is beyond the scope of the judicial system. Liddell's attempt to recast the court's comments as imposing a sentence based on the court's religious beliefs is unpersuasive.

Second, Liddell argues the court gave too little consideration to his rehabilitative needs by discounting the possibility that he was an alcoholic. We conclude the circuit court considered the proper sentencing factors and reasonably discounted Liddell's rehabilitative needs. The court's comments made it clear that it viewed the crime as significantly aggravated given that Liddell had been in custody just thirty minutes prior for operating while intoxicated and knew he was a danger on the roads. The court therefore stressed that a lengthy sentence was necessary for deterrence and punishment. It explicitly considered Liddell's claimed addiction, but discounted his rehabilitative needs because Liddell had no prior criminal history, and the court did not regard operating while intoxicated as a crime necessarily indicating alcoholism. In sum, the

court considered appropriate sentencing factors and reasonably weighed the sentencing objectives based on the facts before it.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court 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