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**DISTRICT III**

March 28, 2023

To:

Hon. Kelly J. Thimm  
Circuit Court Judge  
Electronic Notice

Jeremy Newman  
Electronic Notice

Sandra Paitl  
Clerk of Circuit Court  
Ashland County Courthouse  
Electronic Notice

Sara Lynn Shaeffer  
Electronic Notice

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

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2021AP2128-CR	State of Wisconsin v. Douglas Andrew Kaseno
2021AP2129-CR	(L. C. Nos. 2015CF234, 2017CF173)

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).**

Douglas Kaseno appeals from a judgment convicting him of possession of methamphetamine as a repeat offender, a judgment convicting him of armed burglary and bail jumping as a repeat offender, and an order denying his motion for postconviction relief from both judgments. The sole issue on appeal is whether the circuit court employed a “preconceived policy of sentencing that is ‘closed to individual mitigating factors’” in violation of *State v. Ogden*, 199 Wis. 2d 566, 571, 544 N.W.2d 574 (1996) (citation omitted). Based upon our review of the briefs and records, we conclude at conference that these consolidated cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22). We affirm.

After Kaseno pled no contest to the counts of conviction, the circuit court ordered a presentence investigation report (PSI). The PSI set forth Kaseno's criminal history and correctional experience, which included: probation with conditional jail time for 2002 convictions for entry into a building or construction site and criminal damage to property; jail time for a 2004 conviction for possessing an illegally obtained prescription; probation for a 2006 conviction for taking and driving a vehicle without consent; jail time for 2006 convictions for operating after revocation and possession of THC; probation for a 2008 conviction for theft of movable property; and concurrent terms of four years' incarceration followed by four years' extended supervision for 2012 convictions involving seven counts of burglary. The PSI noted that Kaseno had been revoked from supervision three times on the 2012 burglary convictions. The PSI also discussed Kaseno's family background, his education and employment, and his history of substance abuse, mental illness, and unaddressed trauma.

The PSI recommended sentences of one year of initial confinement followed by two years' extended supervision on the methamphetamine count, four to five years' initial confinement followed by three to four years' extended supervision on the armed burglary count, and one to two years' initial confinement followed by two years' extended supervision on the bail jumping count—without specifying whether the sentences should be consecutive or concurrent. At the sentencing hearing, the State and Kaseno each asked the circuit court to follow the recommendations in the PSI. The only differences were that the State requested the higher range on the armed burglary count, while Kaseno requested the lower range, and that Kaseno asked that all three sentences be ordered to be served concurrently, while the State asked that the bail jumping and methamphetamine sentences be ordered to be served concurrently to one another but consecutively to the armed burglary sentence.

The circuit court rejected the parties' sentencing recommendations as insufficient. It began its discussion with the following comments:

[A]t what point is Mr. Kaseno gonna quit committing crimes in Ashland County? How many burglaries does he have to commit before he gets actually more time than the last burglary he committed? His last burglary was four years initial confinement, followed by four years extended supervision. We don't go backwards in it. We go forward to give more time to show and have some deterrent effect to Mr. Kaseno. And, quite frankly, I don't think that there's any deterrent value anymore because the only time he doesn't commit crimes is when he's incarcerated.

The court then stated that Kaseno was a "habitual criminal" who continued to commit crimes because he "just can't help himself," despite being given "chance after chance after chance." The court explained that its primary sentencing goal, therefore, was to "warehouse" Kaseno in prison "so he cannot commit crimes against other people in our community."

The circuit court acknowledged that Kaseno was "not an evil person" and that he had some "redeeming qualities." However, the court determined that the seriousness of the offenses "demand[ed] a serious consequence for somebody with [Kaseno's] character" and track record. The court concluded that it was necessary to "tap into [the available enhanced penalties for] habitual criminality," as Kaseno was not deterred from criminal activity despite his prior sentences. Nonetheless, the court noted that it was not "maxing [Kaseno] out on all the penalties combined consecutively" because Kaseno had accepted responsibility for his offenses, and he had voluntarily returned some of the items he had stolen. The court then imposed consecutive sentences of three years' initial confinement followed by two years' extended supervision on the methamphetamine count, ten years' initial confinement followed by four years' extended supervision on the armed burglary count, and three years' initial confinement followed by two years' extended supervision on the bail jumping count.

Kaseno contends that the circuit court’s comment that “[w]e don’t go backwards in it. We go forward to give more time” demonstrated a “preconceived policy” of escalating penalties that was impermissibly “closed to individual mitigating factors.” See *Ogden*, 199 Wis. 2d at 571 (citation omitted). However, a court does not erroneously exercise its discretion by relying upon “general predispositions,” as long as it also takes into account the “particular circumstances of the individual offender.” *Id.* at 573. Here, the court took Kaseno’s individual circumstances into account when it decided to impose sentences lower than the permissible maximum penalties based upon Kaseno’s acceptance of responsibility and his return of some of the stolen property. The court did not erroneously exercise its discretion merely by having a general predisposition toward escalating sentences for repeat offenses—a policy that is already embedded into the statutory structure with penalty enhancers for habitual criminality.

Therefore,

IT IS ORDERED that the judgments and postconviction order are summarily affirmed.  
WIS. STAT. RULE 809.21 (2021-22).

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*