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DISTRICT II

May 15, 2024

To:

Hon. David M. Reddy
Circuit Court Judge
Electronic Notice

Jeffrey W. Jensen
Electronic Notice

Michele Jacobs
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Anne Christenson Murphy
Electronic Notice

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

2022AP1052-CR

State of Wisconsin v. Jamaal T. Shellie (L.C. #2014CF71)

Before Neubauer, Grogan and Lazar, 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).

Jamaal T. Shellie appeals a judgment convicting him of two counts of delivery of heroin as a second or subsequent offense. He also appeals an order denying his motion for postconviction relief. Shellie argues that the circuit court erred when it resentenced him after his successful postconviction motion arguing the incorrect application of repeater enhancers. 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 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Shellie was sentenced to five years of initial confinement on each count, to which the circuit court added two-and-one-half years of confinement for repeater enhancers, for a total of seven-and-one half years of initial confinement on each count. The circuit court also imposed five years of extended supervision on each count and ordered that the sentences run consecutively. Shellie moved for postconviction relief. The circuit court vacated the sentences and ordered that Shellie be resentenced.² After a second sentencing hearing, the circuit court imposed seven-and-one-half years of initial confinement and five years of extended supervision on each count, to run consecutively, with no separate repeater enhancer.

Shellie contends that the circuit court erred because it imposed the same total length of confinement when it resentenced him even though it did not apply the repeater enhancers. Shellie contends the circuit court's actions were presumptively vindictive and were not supported by the Record. *See North Carolina v. Pearce*, 395 U.S. 711, 725-26 (1969), *overruled in part by Alabama v. Smith*, 490 U.S. 794 (1989).

Due process mandates that a sentencing court not act vindictively when sentencing a defendant after the defendant successfully attacks his first conviction and/or sentence. *See Pearce*, 395 U.S. at 725. *Pearce* applies a presumption of vindictiveness in some circumstances, “which may be overcome only by objective information in the [R]ecord justifying the [new] sentence.” *State v. Naydihor*, 2004 WI 43, ¶33, 270 Wis. 2d 585, 678 N.W.2d 220. *Naydihor*

² Shellie successfully argued that the initial sentences were erroneous because the circuit court imposed the repeater enhancers on terms of five years of initial confinement, when the repeaters could only be used as a matter of law to enhance sentences of the maximum confinement of seven-and-one-half years.

further explains that “where the presumption is inapplicable, a defendant is required to demonstrate actual vindictiveness in order to prevail.” *Id.*

Assuming without deciding that the sentence imposed by the circuit court on resentencing is more severe, Shellie has not shown that the circuit court violated his due process rights by acting vindictively because there is no reasonable likelihood that the court’s second sentencing decision was based on vindictiveness and the Record shows that the circuit court properly exercised its discretion.

The circuit court judge who initially sentenced Shellie was the same judge who vacated his sentence and resentenced him. Unlike situations where a conviction is reversed by an appellate court, the problem here involved a legal misinterpretation of the applicability of the repeater enhancer, which the circuit court readily recognized and corrected. The procedural history and the facts do not suggest that the circuit court harbored personal bias or had a motive for treating Shellie vindictively or unfairly.

Moreover, the circuit court’s decision to hold a new sentencing hearing and to reconsider the entire sentencing structure allowed for a comprehensive evaluation of the appropriate penalty considering Shellie’s role and the severity of his crimes. The court’s rationale focused on the statutory maximums and the serious nature of Shellie’s offenses, particularly his leadership role in a drug trafficking operation that endangered the community, justifying the lengthy period of initial confinement. The circuit court determined the appropriate length of time for incarceration for the crimes for which Shellie was convicted, and despite the changed statutory basis for its decision, the circuit court imposed the same number of years of confinement. The Record supported the imposition of a severe sentence based on Shellie’s criminal conduct and the impact

of his actions on the community. Therefore, we conclude that the circuit court properly exercised its discretion.

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.
See WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals