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DISTRICT I

July 9, 2024

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2022AP2182-CR State of Wisconsin v. Lavon L. LeFlore, Jr. (L.C. # 2020CF314)
2022AP2183-CR State of Wisconsin v. Lavon L. LeFlore, Jr. (L.C. # 2021CF540)

Before White, C.J., Donald, P.J., and Geenen, J.

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).

Lavon L. LeFlore, Jr. appeals his judgments of conviction for substantial battery using a dangerous weapon and false imprisonment, both with domestic abuse assessments and a habitual criminality repeater; felony bail jumping, as a repeater; and felony witness intimidation, with a domestic abuse assessment. He also appeals from an order denying his postconviction motion seeking resentencing or sentence modification based on the existence of a new factor. 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 summarily affirm.

In January 2020, police officers for the City of West Allis interviewed the victim, S.A.B., while she was being treated at the hospital for injuries caused by her boyfriend, LeFlore. S.A.B. told police that she had been sleeping when LeFlore woke her by poking her in the face with a box cutter, and then demanded sex. S.A.B. stated that LeFlore punched her, digitally penetrated her, and forced her to perform oral sex on him.

LeFlore then accused S.A.B. of sleeping with his friend. He forced her out of the apartment and into his truck, where he continued to hit her, and cut her face and leg with the box cutter. S.A.B. was able to escape from the truck and ran to a McDonald's for help. LeFlore followed her inside and tried to force his way into the bathroom S.A.B. had run to, as seen in surveillance video; he left the McDonald's after the police were called. The cuts on S.A.B.'s face required stitches and caused permanent scarring.

LeFlore was arrested and charged with substantial battery using a dangerous weapon, false imprisonment, mayhem, and second-degree sexual assault, all as a repeater and with domestic abuse assessments. He was also charged with felony bail jumping after police discovered that he was out on bail after previously being arrested on a charge of possession of a firearm while under a domestic abuse injunction.

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

While the case relating to S.A.B.'s injuries was pending, LeFlore was charged in February 2021 with felony intimidation of a witness. Jail records indicated that LeFlore called an unidentified male several times and dictated messages to him to send to S.A.B. on Facebook, attempting to dissuade her from testifying against him. S.A.B. provided police with screen shots of those messages.

Both cases proceeded to trial in May 2021. S.A.B. testified regarding the incident in which she was injured. The jury was shown pictures of the wounds she sustained in the incident, taken when she was being treated at the hospital, and was allowed to see, up close, the permanent scars on S.A.B.'s face from the injuries. S.A.B. also testified about the numerous Facebook messages she received while LeFlore was in jail.

LeFlore testified in his own defense. He denied cutting, punching, or sexually assaulting S.A.B. that night. He stated that S.A.B. had attacked him, punching and kicking him. He said she then "charg[ed]" him with a knife, and that her injuries occurred while she was attacking him.

The jury found LeFlore not guilty of second-degree sexual assault and the mayhem charge, but convicted him of the other charges.

LeFlore was sentenced in July 2021. The trial court imposed consecutive sentences totaling twelve years of initial confinement followed by ten years of extended supervision for the substantial battery, false imprisonment and witness intimidation counts, and a concurrent, evenly bifurcated six-year sentence for the bail-jumping count.

LeFlore filed a postconviction motion seeking resentencing on grounds that the trial court had failed to consider all proper sentencing factors and that the sentence was harsh and excessive. Alternatively, he sought sentence modification, asserting that records regarding his childhood mental health history were not provided to the trial court at the time of sentencing, and thus constituted a new factor.[2]

The trial court rejected both arguments. With regard to resentencing, the court noted its lengthy discussion at sentencing regarding "the aggravated nature and seriousness of these offenses, the impact on the victim (including the fact that the defendant 'carved up' her face), the defendant's character as evidenced by his pattern of behavior and criminality, and his need for rehabilitation," clarifying that "these considerations informed the court's primary sentencing goals in these cases, which were punishment, deterrence, and community protection."

The trial court also rejected LeFlore's contention that his mental health history was a new factor for sentence modification purposes, noting that LeFlore's childhood mental health records were known to him and in existence at the time of sentencing. The court indicated that it took into consideration LeFlore's possible ADHD diagnosis at the time of sentencing, and that even if the records had been provided at that time, they would not have affected the sentence. The court therefore found they were not highly relevant.

Accordingly, the trial court denied LeFlore's postconviction motion. This appeal follows.

[2] In both his postconviction motion and his appellant's brief, LeFlore appears to conflate his claims for resentencing and sentence modification. The trial court addressed them separately, as does the State and this court.

On appeal, LeFlore maintains his claims for resentencing and sentence modification, arguing that the trial court failed to identify its sentencing objectives, and that its "entire approach to sentencing would have been different had it had sufficient records establishing Mr. LeFlore's mental health history." It is well established that sentencing is within the trial court's discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "A trial court misuses its discretion when it fails to state the relevant and material factors that influenced its decision, relies on immaterial factors, or gives too much weight to one factor in the face of other contravening factors." ***State v. Steele***, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112. However, "[w]hen the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the trial court in passing sentence." ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

"The principal objectives of a sentence include, but are not limited to, the protection of the community, the punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In fashioning a sentence to meet those objectives, the trial court must consider the primary sentencing factors of the gravity of the offense, the character of the offender, and the need to protect the public. ***Id.*** The court may also consider other factors, and the weight given to each factor is within the court's discretion. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695.

Here, consideration of the primary sentencing factors and their application to the principal sentencing objectives by the trial court is clearly reflected in the sentencing transcript, which the trial court pointed out in its postconviction decision. *See* ***Stenzel***, 276 Wis. 2d 224, ¶9 (stating that our review of a sentence includes any postconviction proceedings). With regard to

the gravity of the offense, the court discussed at sentencing the aggravated nature of the attack against S.A.B. It also noted LeFlore's "propensity to go armed," whether that weapon was the box cutter used in this attack or a firearm, as reflected in his criminal history. The court labeled this behavior as "dangerous," a reference to the need to protect the public. The court also discussed the "huge problem" of witness intimidation, and the "pattern of harassment" that LeFlore displayed in his contacts with S.A.B., further demonstrating consideration of both the gravity of the offense and protection of the public factors.

The trial court also discussed LeFlore's character at sentencing. It stated that based on LeFlore's criminal history, his conduct in this case, and his related testimony, it was clear that LeFlore had "very little respect for women," had "a lot to learn about how to treat other people," and had "a lot of growing up to do."[3] The court also considered LeFlore's mental health as it related to his character, noting that while there were no mental health records provided at the time of sentencing, it was possible that he had ADHD. However, the court stated that it had seen no indication of "schizophrenia or other major mental illness" in LeFlore's behavior throughout the course of the trial. It therefore did not find his mental health to be "persuasive" in its assessment of LeFlore's character for purposes of imposing sentence.[4]

[3] LeFlore was twenty-one years old at the time of sentencing.

[4] In his brief, LeFlore notes that the trial court, in its postconviction decision, states that it "already reviewed" a presentence investigation report (PSI) for his Walworth County case, which LeFlore filed as an exhibit to his postconviction motion. The Walworth County case was pending at the time of his sentencing in this matter, and therefore was not available for the court's review at the time of sentencing. It appears the trial court may have mistakenly believed the PSI was for these cases.

(continued)

In light of the sentencing factors to which the trial court gave the most weight, the court stated that this was a "prison case," and warranted a term of more than just "one or two years." Furthermore, with regard to the length of LeFlore's sentences, the trial court noted in its postconviction decision that they are "a fraction of the total possible maximum sentence [LeFlore] was facing with all of the penalty enhancers" included with the charges. Sentences that are within the statutory maximums are presumed not to be unduly harsh or unconscionable. ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

In short, the trial court's discussion at the sentencing hearing of its sentencing objectives and the factors it considered, as further clarified in its postconviction decision, reflect that it properly exercised its discretion in imposing LeFlore's sentence. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23; ***Stenzel***, 276 Wis. 2d 224, ¶9. The court simply exercised its discretion differently than LeFlore would have liked, which does not constitute an erroneous exercise of discretion. *See* ***State v. Prineas***, 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206.

We thus turn to LeFlore's request for sentence modification on the grounds that his childhood mental health records are a new factor. A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties." ***State v. Harbor***, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797

The mental health information contained in the PSI came from interviews with LeFlore and his mother; they provided no medical records for the PSI. Both LeFlore and his mother told the PSI writer that he had been diagnosed with paranoid schizophrenia. However, the medical records LeFlore provided with his postconviction motion reflect a diagnosis of ADHD which, as discussed above, the trial court considered at sentencing but found to be unpersuasive. Furthermore, on appeal LeFlore concedes that he "has not been formally diagnosed with schizophrenia."

N.W.2d 828 (citation omitted). Whether a fact or set of facts constitutes a new factor is a question of law that this court considers *de novo*. ***Id.***, ¶33.

We conclude that LeFlore has not established that his childhood mental health records constitute a new factor. The records provided by LeFlore date back to January 2000, so they were clearly in existence at the time of sentencing. Additionally, LeFlore does not claim that he was not aware of the records at the time of sentencing. *See* ***State v. Crockett***, 2001 WI App 235, ¶14, 248 Wis. 2d 120, 635 N.W.2d 673.

Furthermore, the records provided by LeFlore reflect a diagnosis of ADHD, which the trial court discussed at sentencing and dismissed as unpersuasive. Therefore, LeFlore has not demonstrated that the records are highly relevant. As a result, LeFlore has not established that the records are a new factor for purposes of sentence modification. *See* ***Harbor***, 333 Wis. 2d 53, ¶40.

In sum, LeFlore has not demonstrated that either resentencing or sentence modification is warranted. Accordingly, we affirm the judgments of conviction and the order denying his postconviction motion.

IT IS ORDERED that the judgments and order 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