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March 27, 2013

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

2012AP116-CR

State of Wisconsin v. Domenic D. Tramte (L.C. # 2010CF453)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Domenic Tramte appeals from a judgment convicting him of armed robbery with threat of force and from an order denying his motion for sentence modification. On appeal, he challenges his sentence. 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 (2011-12).¹ We affirm.

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

The charges against Tramte arose from a home invasion. Tramte, an adult, and three juveniles invaded a home looking for drugs. During the home invasion, Tramte and his co-actors encountered a man and two young children. Tramte pled no contest, and the circuit court imposed a twelve-year sentence consisting of six years of initial confinement and six years of extended supervision.

Postconviction, Tramte sought sentence modification because the circuit court did not consider his rehabilitative needs, character, or other mitigating circumstances. He also argued that the individual who planned the crime, Alex Garcia, received a lesser sentence. The circuit court declined to modify Tramte's sentence, although the court did make Tramte eligible for the Challenge Incarceration Program and the Earned Release Program. Tramte appeals.

In addressing Tramte's challenge to his sentence, we bear in mind and apply the following principles. In fashioning the sentence, a circuit court must consider various sentencing objectives and factors. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentencing objectives include protecting the community, punishing and rehabilitating the defendant, and deterring others. *Id.* The primary sentencing factors are the gravity of the offense, the defendant's character, and the need to protect the public. *Id.* The discretion of the sentencing judge must "be exercised on a 'rational and explainable basis.'" *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The weight to be given the various factors is within the circuit court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). As long as the sentencing court "considered the proper factors and the sentence was within the statutory limitations, the sentence will not be reversed unless it is so excessive as to shock the public conscience." *State v. Owen*, 202 Wis. 2d 620, 645, 551 N.W.2d 50 (Ct. App. 1996).

Tramte makes multiple attacks on his sentence.² He essentially argues that the circuit court should have placed greater weight on the sentencing factors that favored him. We conclude that the sentence was a proper exercise of sentencing discretion. As discussed below, the circuit court considered the relevant factors, including those which favored Tramte and those which did not or were aggravating. The weight to be given those factors was solely within the circuit court's discretion.

At sentencing, the circuit court considered the remarks of counsel, the presentence investigation report, the various letters the court had received, and the record. The court reflected upon the following: the gravity of the offense, which it deemed "very serious"; the nature of the crime, which was gang-related and aggravated because it occurred in an occupied residence; the victims, including children, who were very frightened when confronted with four armed, masked intruders; that Tramte fought with officers when he was apprehended; and that while Tramte may not have been a leader of the home invasion, he chose to leave his young child and engage in this crime. The court also considered Tramte's character, his history of prior juvenile offenses, and that he tried to minimize and justify his behavior on the grounds that he was intoxicated and the victim was a drug dealer. The court also noted positive aspects about Tramte: he completed his high school equivalency degree, and he had testimonials from and the support of his family. The court was aware of the difficulties in Tramte's upbringing. The court found that the community had to be protected from conduct like Tramte's and that Tramte required treatment in a prison setting.

² To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An
(continued)

In light of the seriousness of the crime, Tramte's character and rehabilitative needs, and the need to protect the public, the court imposed a twelve-year sentence. We conclude that the court imposed an individualized sentence, and its sentencing rationale complied with *Gallion*.

Postconviction, Tramte sought sentence modification. The circuit court rejected Tramte's arguments relating to the lesser sentence received by Alex Garcia, who was involved in planning the home invasion but did not enter the home with Tramte and the others. The court distinguished the involvement of Garcia and Tramte and the offenses for which each defendant was convicted.³ The court found that at the time of sentencing, it considered Tramte's character, family support and testimonials, the factors that favored him, the severity of the offense as classified by the legislature, the serious nature of the conduct and the impact on the victims, and Tramte's rehabilitative needs and personal history. The court denied sentence modification because it had imposed an individualized sentence based on Tramte's culpability and personal characteristics. We agree with the circuit court that the sentence did not require modification.

Tramte argues that the circuit court failed to explain why it imposed a twelve-year sentence. We see no error. Mathematical precision is not required. *Gallion*, 270 Wis. 2d 535, ¶49. A defendant is not entitled to a mathematical breakdown of how each sentencing factor translates into a specific number of years in the sentence. *State v. Fisher*, 2005 WI App 175, ¶¶21-22, 285 Wis. 2d 433, 702 N.W.2d 56. The record supports the sentence imposed.

appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

³ Garcia was convicted of burglary and soliciting a crime for gang activity. Garcia did not invade the home.

We reject Tramte’s claim that his sentence constitutes an equal protection violation when compared with Garcia’s sentence. The circuit court more than distinguished Tramte’s conduct and offenses from those of Garcia, who received a lesser sentence. A disparity in sentences between co-actors is not improper if the sentences are based on individual culpability and rehabilitative needs. *State v. Toliver*, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994). Tramte’s sentence was not excessive or disproportionate to the offense “as to shock public sentiment or violate the judgment of reasonable people” *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citations omitted).

Because the circuit court properly exercised its sentencing discretion, the court did not err in denying Tramte’s sentence modification motion.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals