

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 24, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2014AP2749-CR
2014AP2750-CR
2014AP2751-CR
2014AP2752-CR**

**Cir. Ct. Nos. 2012CM4880
2012CF2814
2012CF4663
2012CF6146**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRADLEY WAJER,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. In these consolidated appeals, Bradley Wajer appeals judgments convicting him of eight criminal counts and an order denying his postconviction motion. Wajer argues that he is entitled to resentencing because the circuit court erroneously excluded evidence that the State made varying plea offers depending on his ability to pay his child support arrears. We disagree and affirm.

BACKGROUND

¶2 Wajer was convicted of eight criminal counts in four different cases. Four counts were felonies (three counts of failure to pay child support and one count of bail jumping) and four were misdemeanors (single counts of disorderly conduct and resisting an officer, and two counts of misdemeanor bail jumping). His convictions rest on a negotiated plea agreement by which he entered guilty pleas to the eight counts in exchange for the State's agreement to dismiss two additional felony counts and to recommend a total sentence of fourteen years and one month (eight years and a month of initial confinement and six years of extended supervision).

¶3 In accordance with the plea agreement, the circuit court dismissed the two additional felony counts (a failure to pay child support charge and a bail jumping charge) at the plea hearing, and the State made the promised sentence recommendation.

¶4 While making his remarks at sentencing, Wajer's trial counsel attempted to inform the court that the State had been willing to recommend a shorter sentence in exchange for Wajer's payment against the unpaid child support. Counsel pointed out that although the State was recommending more

than eight years of confinement, it would have recommended only two years in confinement if Wajer paid off the entire amount he owed in child support, approximately \$32,000. The circuit court admonished counsel for mentioning the other plea offer and demanded that it be stricken from the record. The circuit court subsequently sentenced Wajer to five years of initial confinement followed by eight years of extended supervision. Additionally, the circuit court ordered Wajer to pay restitution in the amount of the unpaid child support.

¶5 Wajer filed a postconviction motion seeking resentencing. He argued that the circuit court erred by excluding evidence of the State's alternate plea offers. The motion detailed the State's three separate plea offers and included a letter setting forth those offers. The first offer was for the State to recommend eight years and one month in confinement, followed by six years of extended supervision. The second offer required Wajer to pay \$12,000 toward the \$32,257.30 of outstanding child support. If he made that payment, the State would have recommended a sentence of four years and ten months in confinement, followed by five years of extended supervision. If Wajer paid the entire amount of outstanding child support, the State would have recommended a sentence of two years and ten months in confinement, followed by two years of extended supervision.

¶6 In the motion, Wajer argued that this information was relevant because it reflected that the State's plea offer was based, in part, on how much money he could pay toward child support. Wajer asserted that he was compelled to accept the least favorable plea offer, not because he did not want to pay the child support, but because he could not do so. Included with the motion was a copy of Wajer's credit report showing that he was in immense debt. Thus, Wajer

argued the State was offering to trade money for years off its sentencing recommendation, but was making that offer to a man with no ability to pay.

¶7 The circuit court denied the motion. In so doing, the court acknowledged that it “may have erroneously concluded that trial counsel was attempting to involve it in the prior plea negotiations” when it prevented counsel from introducing the information regarding the State’s various plea offers. However, it went on to conclude that it would have imposed the same sentence even if this information had been presented. The court further noted:

That [Wajer] was in miserable financial condition was assumed by the court when it sentenced him, so this information would not have affected its reasons for the sentence it imposed. The court actually gave the defendant a break based on all the circumstances presented, including his lack of sufficient funds, and as a result did not follow the State’s eight[-]year recommendation for initial confinement.

DISCUSSION

¶8 Wajer argues the circuit court erred when it excluded evidence of the State’s alternate plea offers. He contends that this evidence was relevant as it revealed the reasons for the State’s sentencing recommendation—which were not simply the offenses in these cases but also how much Wajer could have paid against the child support arrears. Wajer submits, “the State put a \$32,000 price tag on more than five years in prison, without any regard for Mr. Wajer’s actual ability to pay.”

¶9 The crux of this appeal is whether the circuit court erroneously exercised its discretion when it sentenced Wajer. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A sentencing court must consider the

principal objectives of sentencing, including the protection of the community, the punishment and 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. It should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. Our review of the court’s exercise of its sentencing discretion may include a postconviction order, because the court has an additional opportunity to explain its sentence when challenged by postconviction motion. See *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

¶10 In his briefs, Wajer relies on *State v. Spears*, 227 Wis. 2d 495, 596 N.W.2d 375 (1999), arguing that it supports the broad premise that a defendant is entitled to resentencing where he or she can show that the circuit court erroneously excluded relevant information at sentencing. However, in *State v. Robinson*, 2001 WI App 127, 246 Wis. 2d 180, 629 N.W.2d 810, we read *Spears* as being applicable in those situations where the circuit court refuses to consider relevant evidence regarding the nature of the offense:

The supreme court held in *Spears* that “where a victim’s criminal record supports a defendant’s version of a crime, the gravity of which crime is a sentencing factor, it should be admitted as evidence at the defendant’s sentencing hearing.” The specific error committed by the [circuit] court was its “refus[al] to consider” this evidence, which the supreme court deemed relevant to the circumstances leading to the crime in question.

....

Spears does not stand for the proposition that a defendant may, at sentencing, present any and all evidence he or she wishes to present.

Robinson, 246 Wis. 2d 180, ¶¶20, 22 (citations omitted; one set of brackets in **Robinson**). In **Robinson**, we concluded that the circuit court did not erroneously exercise its discretion when it refused, during sentencing, to view a car where a sexual assault was alleged to have occurred. *Id.*, ¶21.

¶11 Here, the circuit court did not refuse to consider relevant evidence regarding the nature of the offenses committed—it refused to hear evidence of various plea offers that were made. The State submits, and we agree, that “[t]he fact that Wajer was offered the opportunity to enter a more favorable plea agreement if he paid his child support arrears is hardly surprising or unusual.”

¶12 The sentencing transcript reveals that the circuit court’s determination was based on the seriousness of Wajer’s repeated failure to honor his child support obligations, his character and need for rehabilitation, and the importance of deterrence and public protection. The circuit court acted in accordance with these principles and its sentencing determination reflects a proper exercise of discretion, which notably was less than what was recommended by the State.

¶13 Moreover, in resolving Wajer’s postconviction motion, the circuit court considered the proffered plea offer evidence and concluded that it would not have impacted its sentencing decision. Accordingly, we affirm.

By the Court.—Judgments and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

