Appeal No. 2014AP2966-CR

Cir. Ct. No. 2013CF4688

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EVRICK S. DALTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Curley, P.J., Brennan, J., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Evrick S. Dalton appeals a judgment convicting him of second-degree sexual assault of a child under the age of sixteen. He also

appeals an order denying his postconviction motion for resentencing. He argues that the circuit court misused its sentencing discretion. We affirm.

¶2   Dalton and Jaquan Flippin were at a park when they began talking to some young girls they met, one of whom was the fifteen-year-old victim. Dalton and Flippin drank alcohol and smoked both cigarettes and marijuana with the girls. The victim, who was afraid to return home intoxicated, went with Dalton to Flippin's house, where Dalton and Flippin sexually assaulted her.

¶3   The State charged Dalton with two counts of first-degree sexual assault, one of which was for forcibly aiding and abetting Flippin, one count of strangulation and suffocation, and one count of second-degree sexual assault of a child under the age of sixteen. Pursuant to a plea agreement, the State dismissed all of the charges except second-degree sexual assault of a child under the age of sixteen. The dismissed charges were read in for sentencing. The circuit court sentenced Dalton to twenty-five years of imprisonment, with seventeen years of initial confinement and eight years of extended supervision.

¶4   Our standard of review is well settled. Sentencing lies within the circuit court's discretion, and appellate review is limited to considering whether discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court should specify the objectives of the sentence during the sentencing hearing, which "include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *Id.*, ¶40. Additionally, the circuit court must explain the link between the sentencing objectives and the sentence imposed. *Id.*, ¶46.

¶5   Dalton argues that the circuit court misused its discretion because it did not adequately explain why a twenty-five year sentence was necessary given his character and rehabilitative needs, the need to protect the public, and the gravity of the offense.

¶6   The circuit court adequately explained the reasons for its sentence. *Gallion* teaches that the sentencing circuit court is not required to explain a sentence with "mathematical precision." *Id.*, ¶49. Rather, it should provide "an explanation for the general range of the sentence imposed." *Id.* Here, the circuit court stated that the objectives of its sentence were "punishment, deterrence and rehabilitation," with punishment being the most important. The circuit court explained: "What you did was for your own self-gratification. And putting this child in harm's way. And what you've done is left a legacy of sadness behind. And you have to be punished because of that." The circuit court also reasoned that a substantial prison sentence was necessary because Dalton's heinous actions had a substantial negative impact on the young and vulnerable victim.

¶7   The circuit court expounded on the reasons for the sentence in its order denying the postconviction motion, saying that "[a]ny person who would do what this defendant did clearly has significant needs that can only [be] addressed during a lengthy term of confinement." The circuit court also explained that while the sentence was "tough," it was warranted under the facts of the case because Dalton's conduct was "outrageous and sickening"; he knew the victim was underage and in a vulnerable state. Where, as here, the circuit court has demonstrated that it exercised its discretion by considering the facts and circumstances of the case in light of the applicable legal principles, we "follow[] a consistent and strong policy against interference with the discretion of the trial

court in passing sentence.'" *Id.*, ¶18 (citation omitted). Therefore, we affirm the circuit court's decision.

¶8 Dalton next argues that the circuit court improperly considered the offenses that were dismissed pursuant to the plea agreement and read in for the purposes of sentencing. In particular, Dalton objects to the charges that alleged the use of force, arguing that he never admitted to using force during the assault. Acknowledging that the circuit court was allowed to consider the read-in offenses for the purpose of evaluating his character, he contends the circuit court went beyond this limit and sentenced him as if he had used force on the victim.

¶9 It is well-established that a sentencing court may consider dismissed charges that are read in for purposes of sentencing, regardless of whether the defendant admits to the charges. *State v. Straszkowski*, 2008 WI 65, ¶58, 310 Wis. 2d 259, 750 N.W.2d 835 ("no admission of guilt from a defendant is required … for a read-in charge to be considered for sentencing purposes"). Moreover, our review of the circuit court's comments convinces us that the circuit court considered the read-in offenses as they bore on Dalton's character—it was not attempting to punish him for the crimes that had been dismissed. Therefore, we reject Dalton's argument that the circuit court improperly considered the read-in offenses.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* Wis. Stat. Rule 809.23(1)(b)5. (2013-14).