COURT OF APPEALS
DECISION
DATED AND FILED

April 15, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP540 **Cir. Ct. No. 2001CF5783**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTIONIOUS K. FERRELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ and M. JOSEPH DONALD, Judges. *Affirmed*.

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 PER CURIAM. Antionious K. Ferrell appeals from a judgment of conviction for felony murder and two armed robberies, and from a postconviction order summarily denying his supplemental motion for plea withdrawal and

resentencing.[1] The issues are whether Ferrell's allegations are sufficient for an evidentiary hearing on his claim that his guilty pleas were constitutionally defective, and whether the trial court erroneously exercised its sentencing discretion and violated Ferrell's due process rights when it allegedly failed to adequately explain the reasons for the length of the aggregate sentence, and failed to address how the confinement term was the minimum amount of custody necessary to achieve the sentencing considerations ("minimum custody standard"). We conclude that Ferrell's alleged unawareness that he would be required to serve every day in prison of his initial confinement term without the possibility of parole or good-time credit ("day-for-day" claim) is a collateral consequence of his guilty pleas and would not vitiate his otherwise constitutionally valid pleas, and that the trial court's explanation for the aggregate sentence was reasoned and reasonable, and addressed how the sentence met the minimum custody standard. Therefore, we affirm.

¶2 Ferrell was originally charged with first-degree intentional homicide, attempted armed robbery and three armed robberies, each as a party to the crime. Incident to a plea bargain, Ferrell pled guilty to felony murder and two armed robberies with the threat of force, each as a party to the crime, in violation of WIS. STAT. §§ 940.03, 943.32(2) and 939.05 (2001-02). The trial court imposed a forty-five-year sentence for the felony murder, comprised of thirty- and fifteen-year respective periods of initial confinement and extended supervision, and two twenty-year sentences for the armed robberies, each comprised of fifteen- and

[1] The Honorable Richard J. Sankovitz entered the judgment of conviction. The Honorable M. Joseph Donald entered the order denying Ferrell's supplemental motion for plea withdrawal and resentencing.

five-year respective periods of initial confinement and extended supervision, to run concurrent to each other but consecutive to the felony murder sentence.

¶3 This court rejected Ferrell's no-merit appeal. *See* ***State v. Ferrell***, No. 2003AP2334-CRNM, unpublished slip op. at 3-4 (WI App Apr. 14, 2005). Ferrell then filed a postconviction motion for plea withdrawal, contending that his guilty pleas were constitutionally defective because the trial court failed to inform him of certain consequences of his proposed guilty pleas, and his trial counsel was ineffective in failing to advise him of those same consequences. The trial court summarily denied the motion, ruling that a then recent decision was dispositive of Ferrell's related issues. *See* ***State v. Plank***, 2005 WI App 109, ¶¶14-17, 282 Wis. 2d 522, 699 N.W.2d 235. Ferrell moved for reconsideration, contending that the trial court only decided one of the issues he raised. The trial court summarily denied his reconsideration motion. Ferrell appealed, but after successive appointments of postconviction counsel, he voluntarily dismissed his appeal to allow the filing of a supplemental postconviction motion.[2]

¶4 Current counsel filed a supplemental postconviction motion seeking plea withdrawal and resentencing. The trial court summarily denied the motion; Ferrell appeals.

¶5 Ferrell seeks plea withdrawal, contending that had he understood that he was required to serve every day imposed in confinement, he would not have waived his right to a jury trial and pled guilty. After litigating this issue on several alternative bases in the trial court, he distinguishes his claim from that

[2] The successive appointments of counsel were necessitated by a conflict of interest and are not relevant to this appeal.

decided in ***Plank***, clarifying that he was not blaming the trial court for failing to notify him of the day-to-day consequences, but that his trial counsel never so informed him. After the trial court rejected his ineffective assistance claim, he further clarifies that he is no longer pursuing that basis for plea withdrawal, but simply alleging that he was unaware of the day-to-day consequences of his sentence, and thus, waived his right to a jury trial and entered his guilty pleas without knowing intelligence.

¶6 To enter a knowing, intelligent and voluntary plea, the defendant must understand the potential punishment and direct consequences of that plea. *See* ***Plank***, 282 Wis. 2d 522, ¶13. "Defendants have a due process right to be notified about the 'direct consequences' of their pleas. A direct consequence of a plea is one that has a definite, immediate, and largely automatic effect on the range of a defendant's punishment." ***State v. Byrge***, 2000 WI 101, ¶60, 237 Wis. 2d 197, 614 N.W.2d 477 (citation omitted). "Information about 'collateral consequences' of a plea, by contrast, is not a prerequisite to entering a knowing and intelligent plea." ***Id.***, ¶61 (citation omitted).

> Collateral consequences are indirect and do not flow from the conviction. For example, collateral consequences may be contingent on a future proceeding in which a defendant's subsequent behavior affects the determination. Sometimes a collateral consequence is one that rests not with the sentencing court, but instead with a different tribunal or government agency. The distinction between direct and collateral consequences essentially recognizes that it would be unreasonable and impractical to require a [trial] court to be cognizant of every conceivable consequence before the court accepts a plea.

Id. (citations omitted).

¶7 Truth-in-Sentencing abolished parole and good-time credit. *See* ***Plank***, 282 Wis. 2d 522, ¶17. Consequently, it was not that Ferrell was ineligible

for parole or good-time credit, but that the law had changed and those options were not available to him. The elimination of parole and good-time credit did not have "'a definite, immediate, and largely automatic effect'" on the range of Ferrell's punishment. *See* ***id.***, ¶13 (citation omitted). Ferrell's claimed unawareness of the elimination of parole and good-time credit incident to the current sentencing scheme was a collateral consequence of his guilty pleas, and did not invalidate them or his waiver of a jury trial. *See* ***id.***, ¶17. We therefore deny his claim for plea withdrawal.

¶8 Farrell sought resentencing for the trial court's failures to explain the reasons for the aggregate sentence and how its aggregate sentence met the minimum custody requirements. Our principal focus is whether the trial court erroneously exercised its sentencing discretion.

> When a criminal defendant challenges the sentence imposed by the [trial] court, the defendant has the burden to show some unreasonable or unjustifiable basis in the record for the sentence at issue. When reviewing a sentence imposed by the [trial] court, we start with the presumption that the [trial] court acted reasonably. We will not interfere with the [trial] court's sentencing decision unless the [trial] court erroneously exercised its discretion.

State v. Lechner, 217 Wis. 2d 392, 418-19, 576 N.W.2d 912 (1998) (citations and footnote omitted).

¶9 The primary sentencing factors are the gravity of the offense, the character of the offender, and the need for public protection. ***State v. Larsen***, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). The weight the trial court accords each factor is a discretionary determination. ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The trial court should also explain how the confinement term meets the minimum custody standard. *See* ***State v. Gallion***,

2004 WI 42, ¶23, 270 Wis. 2d 535, 678 N.W.2d 197. The trial court's obligation is to consider the primary sentencing factors and to exercise its discretion in imposing a reasoned and reasonable sentence. *See* ***Larsen***, 141 Wis. 2d at 426-28. The trial 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 Ferrell contends that the trial court failed to adequately explain why it imposed such a lengthy sentence, claiming that the trial court did not tailor its sentence to Ferrell individually or to the particular circumstances of his involvement in these crimes. We disagree; the trial court explained the primary sentencing factors, and applied the relevant circumstances to those factors.

¶11 The trial court assessed the seriousness of these offenses by explaining them, reciting the maximum potential penalties, describing the "tremendous impact" on the victims of having "had a gun put in [their] face[s] and [their] property demanded" for "doing nothing more than going about their daily lives, trying to provide for their families and struggling with their own difficulties and heartaches." The trial court detailed the impact these offenses had on the victims, and the tremendous loss suffered by the family of the murder victim.

¶12 The trial court also considered Ferrell's character. It credited Ferrell for "spar[ing] the family the heartache of a trial." It also considered the "difficulties and the pain and heartache that [Ferrell] has experienced," but "do[es]n't see how it can be used as a justification for taking someone's life, continuing to cause pain and heartache to others." The trial court was particularly troubled with the number of shots fired, even after there was no purpose to continue firing. The day after murdering that victim, the trial court was mindful

that "Ferrell and his compatriots [we]re still out there robbing folks as if nothing ha[d] happened."

¶13 The trial court was also mindful of its obligation to protect the community. The trial court characterized Ferrell as someone "at a point in [his] life where [he] felt that [he] had nothing to lose." It explained that "probably the most dangerous individual in this community is someone who feels that they have nothing to lose, because then they will stop at nothing to get what they want.… As long as they get what they want, that's all that matters." It then told Ferrell that it "do[es]n't know what it is going to take, because clearly the loss of someone's life was not enough to get [him] to stop. [The trial court is] not sure how many more lives that this court can afford to [have] affected in this fashion."

¶14 Ferrell also criticizes the trial court for failing, in its postconviction order, to further elaborate on its reasons for the aggregate sentence. The trial court provided ample reasoning when it imposed sentence. In denying Ferrell's postconviction motion, the trial court acknowledged its having reviewed the sentencing transcript; as previously demonstrated, the record confirms the proper exercise of sentencing discretion. There is no need to reiterate or further elaborate on the reasons and reasoning evident in the sentencing transcript. We reject Ferrell's contention that the trial court did not adequately explain its reasons for the aggregate sentence.

¶15 Ferrell also contends that the trial court failed to explain how its aggregate sentence met the minimum custody standard and why it imposed the particular sentence and initial confinement terms that it did. We disagree. The trial court did not recite any particular magic words, such as minimum custody standard or least possible punishment; however, it explained why a lengthy period

of confinement was warranted. The trial court also did not specify why it imposed the precise duration and structure of the sentences that it did, but it provided ample reasons to demonstrate a proper exercise of sentencing discretion.

¶16 The trial court should explain the linkage between the component parts of the bifurcated sentence and the trial court's sentencing objectives. *See* ***Gallion***, 270 Wis. 2d 535, ¶46. It does not, however, need "to provide an explanation for the precise number of years chosen." ***State v. Taylor***, 2006 WI 22, ¶30, 289 Wis. 2d 34, 710 N.W.2d 466 (citing ***McCleary v. State***, 49 Wis. 2d 263, 182 N.W.2d 512 (1971)).

¶17 The trial court was mindful that an innocent victim of unnecessary and repeated gunfire was dead, yet the violent crime spree continued. As the trial court explained:

> When [it] take[s] into account the number of offenses, the length of this crime spree, the impact that it has had on the community, the personal loss that the community has suffered as well as the loss the victims have suffered, it's painfully obvious to this court that confinement is necessary not only to address the extensive treatment needs that [Ferrell] ha[s] but also to protect the community from further criminal activity.

It did not impose the maximum aggregate sentence, and it imposed the two armed robbery sentences to run concurrently to each other; consequently, the trial court determined that the maximum potential aggregate sentence was not warranted for these serious offenses. It characterized Ferrell as particularly dangerous because it perceived him as "feel[ing] that [he] ha[s] nothing to lose … [and] will stop at nothing to get what [he] want[s]." The trial court concluded its sentencing remarks by summarizing its reasoning:

> [The trial court] feel[s] that the length of this sentence is necessary to address those needs that [Ferrell]

> ha[s], but it is also necessary to protect. As long as [he is] confined … the community will be free of any potential victims that could be created because [he] want[s] to get something for nothing.

¶18 Ferrell seeks a specificity the law does not require. *See* ***Taylor***, 289 Wis. 2d 34, ¶30; ***State v. Ramuta***, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 ("no appellate-court-imposed tuner can ever modulate with exacting precision the exercise of sentencing discretion"). This crime spree, and the brazen manner in which it was carried out, demonstrated a disregard for human life and lawful conduct. Continuing with armed robberies after an unnecessary murder and using a display of disproportional force warranted a lengthy confinement period to protect the public from such wanton and senseless violence. We conclude that the trial court properly exercised its discretion in explaining why a lengthy sentence was warranted for crimes of this magnitude.

¶19 Ferrell also contends that the trial court did not explain why a lesser sentence would not have accomplished its objectives. We view this criticism as similar to the previous criticism on explaining how the sentence met the minimum custody requirements, and we reject it for the same reasons. Insofar as Ferrell seeks an explanation on why the trial court did not explain why it did not follow defense counsel's sentencing recommendation, or why it decided that a lesser period of confinement was inappropriate, the law does not require such an explanation. Stated otherwise, the trial court is required to exercise its discretion to support the sentence it imposed; it is not required to explain why it rejected various sentencing recommendations and lesser proposed sentences.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).