COURT OF APPEALS
DECISION
DATED AND FILED

May 13, 2014

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 No. 2013AP1782-CR **Cir. Ct. No. 2011CF2698**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD L. JONES, JR.,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Richard L. Jones, Jr., appeals from a judgment of conviction for six crimes related to the shooting of his wife and sixteen-year-old stepdaughter. He also appeals from an order denying his motion for sentence modification. He argues that the trial court erroneously exercised its sentencing

discretion because the sentence is longer than necessary and because the trial court "focused exclusively on the seriousness of the offense." We affirm.

BACKGROUND

¶2 Jones's wife obtained a restraining order against him and called the police when he came to their home and refused to leave. After an officer provided Jones with a copy of the order and escorted Jones from the home, Jones returned to the property and hid in the family's garage for hours. At some point, he entered the home while his wife and stepdaughter were out. When they returned, he was hiding in a bathroom. He shot his stepdaughter and his wife multiple times, then paused to reload his gun and shot his wife again. Both women suffered severe physical injuries that required emergency surgery and hospitalization. Jones fled the state and was arrested about four days later when he returned to Milwaukee.

¶3 The jury found Jones guilty of the following crimes: (1) one count of attempted first-degree intentional homicide–domestic abuse, by use of a dangerous weapon; (2) one count of attempted first-degree intentional homicide, by use of a dangerous weapon; (3) one count of first-degree reckless injury–domestic abuse, by use of a dangerous weapon; (4) one count of first-degree reckless injury, by use of a dangerous weapon; (5) one count of being a felon in possession of a firearm; and (6) one count of violating a domestic abuse injunction. *See* WIS. STAT. §§ 940.01(1)(a); 939.32; 939.63(1)(b); 940.23(1)(a); 941.29(2); 813.12(4); 968.075(1)(a) (2011–12).[1]

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 At the time of sentencing, Jones was fifty-two years old and faced a maximum sentence of 135 years and nine months of initial confinement and sixty-five years of extended supervision. For the attempted homicide counts, the trial court sentenced Jones to two consecutive terms of twenty years of initial confinement and ten years of extended supervision. It imposed concurrent sentences of ten years of initial confinement and ten years of extended supervision for each of the reckless injury counts.[2] Finally, it imposed consecutive sentences of one year and nine months in the House of Correction for the felon-in-possession and restraining order violation counts, respectively. Thus, the global sentence was forty-one years and nine months of initial confinement and twenty years of extended supervision.

¶5 After a new lawyer was appointed for Jones, he filed a motion for sentence modification, arguing that the sentence was longer than necessary and that the trial court failed to explain why forty years of initial confinement was necessary.[3] The trial court denied the motion in a written order, concluding that it

[2] With respect to count four, the transcript states that the trial court imposed "10 years of initial confinement and 10 years of extended supervision," but the amended judgment of conviction states that the total sentence for count four is thirty years, including a twenty-year term of initial confinement. "[A]n unambiguous oral pronouncement controls when a conflict exists between a court's oral pronouncement of sentence and a written judgment." ***State v. Prihoda***, 2000 WI 123, ¶24, 239 Wis. 2d 244, 257, 618 N.W.2d 857, 864. Therefore, upon remittitur, the trial court shall enter an amended judgment of conviction indicating that the sentence on count four is twenty years, with a ten-year term of initial confinement. *See* ***id.***, 2000 WI 123, ¶5, 239 Wis. 2d at 247–248, 618 N.W.2d at 860 (The trial court must correct a clerical error in the sentence portion of a written judgment or direct the clerk's office to make the correction.).

[3] Jones focused his argument on the sentences imposed for the attempted homicides and did not address the short sentences imposed for being a felon in possession of a firearm and violating a restraining order. He also did not challenge the length or conditions of extended supervision. In addition, although the motion was titled "Motion to Modify Sentence," Jones in his conclusion ultimately asked the trial court to vacate his sentence "and set the matter for resentencing." On appeal, Jones seeks resentencing.

had considered relevant factors and had not given "too much weight to one factor." It also said: "This case involved extremely serious crimes and it required serious punishment."

DISCUSSION

¶6 Jones argues that his sentence "is obviously longer than is necessary" and that the trial court erred because it "focused exclusively on the seriousness of the offense." He asserts that the trial court "failed to set forth the reasons for imposing the sentence that was imposed." (Bolding omitted.) He also cites national crime statistics for the proposition that "there is a precipitous drop-off on the crime rate after the age of sixty-five." Relying on those statistics, he contends that imposing what he claims amounts to a life sentence was "not the minimum amount of time necessary to accomplish the goals of sentencing." (Bolding omitted.)

¶7 We begin our analysis with the applicable legal standards. At sentencing, the trial 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, 606, 712 N.W.2d 76, 82, and it must determine which objective or objectives are of greatest importance, ***State v. Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d 535, 557, 678 N.W.2d 197, 207. In seeking to fulfill the sentencing objectives, the trial court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 851, 720 N.W.2d 695, 699. The weight to be given to each factor is committed to the trial court's discretion. ***Ibid.***

¶8 The sentencing court is generally afforded a strong presumption of reasonability, and if our review reveals that discretion was properly exercised, we follow "'a consistent and strong policy against interference with the discretion of the trial court in passing sentence.'" ***Gallion***, 2004 WI 42, ¶18, 270 Wis. 2d at 549, 678 N.W.2d at 203 (citation omitted). Our analysis includes consideration of postconviction orders denying motions for sentence modification, because a 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, 247 (Ct. App. 1994).

¶9 In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in ***Gallion*** and its progeny. The trial court began by discussing Jones's character. It discussed his criminal history—which included convictions for theft and possession with intent to deliver—his past employment, his family caretaking, and his history with drugs and alcohol. The trial court also noted that after shooting two members of his family, Jones could not seem to understand "why they were upset[,] … [w]hy they don't want anything to do with you[,]" and "[w]hy they don't want to see you get out of jail."[4]

¶10 Next, the trial court discussed the crimes and the need to hold Jones "accountable for that day," which it said was "appropriate because this is a civil society." It called the offenses "horrific," noting that "it's hard to say it was a spur

[4] During his allocution, Jones said that he did not intend to kill his wife or his stepdaughter, noting: "[I]f I just wanted to kill them, they wouldn't be here." He also expressed surprise that his wife wanted him to be incarcerated for the rest of his life, stating: "I just can't believe that she's doing this."

of the moment decision when … you sat in the garage for hours waiting for them to come back." The trial court recognized that Jones had "almost killed" his stepdaughter and that her doctor had testified "that practically every drop of her blood left her body." It said that Jones's wife had "multiple organ damage" and will have "medical issues for the rest of her life." The trial court also discussed the threat of domestic violence and how Jones's wife had just obtained a restraining order that was supposed to protect her. The trial court told Jones that he was being sentenced for his actions and that "people cannot do what you did to another human being without the[re] being severe sanctions attached to it."

¶11 In its written decision denying the postconviction motion, the trial court said that its sentence was "essential to the protection of the victims and the public." It said that the terms of initial confinement were "both reasonable and necessary to accomplish the goals of the criminal justice system." The trial court also reiterated that this case "required serious punishment."

¶12 We conclude that the trial court's remarks at sentencing—as well as its additional statements in its written order—demonstrate that it complied with the dictates of ***Gallion***. It discussed appropriate sentencing factors and acted within its authority when it chose to focus primarily on punishment as the goal of the sentence. *See* ***Cunningham v. State***, 76 Wis. 2d 277, 283, 251 N.W.2d 65, 68 (1977) ("It is clear that a sentence can be imposed which considers all relevant factors but which is based primarily on the gravity of the crime or the need to protect society.").

¶13 Furthermore, the sentence was not excessive. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975). Jones was facing over 135 years of initial confinement, and the State urged the trial court to impose two

maximum, consecutive sentences on the two homicide counts (totaling ninety years of initial confinement and forty years of extended supervision). The trial court chose to impose a significantly shorter sentence, ordering Jones to serve just under forty-two years of initial confinement for all six crimes, which is less than one third of what could have been imposed and was not unduly harsh. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 108, 622 N.W.2d 449, 456 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable."). Given the extreme violence and the significant harm inflicted, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***Ocanas***, 70 Wis. 2d at 185, 233 N.W.2d at 461.

¶14 Finally, we address Jones's complaint that the trial court imposed what may ultimately be a life sentence without discussing Jones's life expectancy. Jones cites crime statistics, suggesting that he would not be a risk to the community in twenty years. Jones's arguments are similar to those raised in the case of a seventy-eight-year-old defendant who was sentenced to eight years of initial confinement. *See* ***State v. Stenzel***, 2004 WI App 181, ¶17, 276 Wis. 2d 224, 238, 688 N.W.2d 20, 26-27. Stenzel "fault[ed] the court for not assigning any relevancy to his life expectancy" and argued that the sentence imposed "virtually guarantee[d] that he will serve a life sentence." ***Ibid.*** We held: "[T]he defendant's life expectancy, coupled with a lengthy sentence, while perhaps guaranteeing that the defendant will spend the balance of his or her life in prison, does not have to be taken into consideration by the [trial] court." ***Id.***, 2004 WI App 181, ¶20, 276 Wis. 2d at 240, 688 N.W.2d at 27. Applying ***Stenzel***'s holding here, we reject Jones's argument that the trial court was required to consider Jones's life expectancy when it sentenced him.

¶15 For the foregoing reasons, we conclude that the trial court did not erroneously exercise its sentencing discretion. We affirm the judgment and order.

By the Court.—Judgment and order affirmed.

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