COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP633-CR **Cir. Ct. No. 2015CF539**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHENEYE LESHIA EDWARDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed in part; reversed in part and cause remanded.*

¶1 BRENNAN, P.J.[1] Cheneye Leshia Edwards appeals from a judgment of conviction and an order denying his[2] motion for expunction.[3] On

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f)(2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

appeal, he argues solely that the postconviction court wrongly denied his postconviction motion for expungement. Edwards had requested expunction at the time of sentencing, but the court had denied the request. He did not appeal the denial at that time. But after successfully completing probation, Edwards filed a postconviction motion in which he (1) requested expunction and argued that the postconviction court possessed inherent power to grant expunction after sentencing; and (2) in the alternative, sought reversal of the expunction denial order and a new expunction hearing on the grounds that the trial court had improperly exercised discretion in denying expunction at sentencing. The postconviction court denied his motion, and he appealed.[4]

¶2 We conclude that Edwards prevails on this second argument and therefore do not reach his inherent powers argument.[5] The sentencing court failed

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[2] We note that appellant's brief advised that "Mr. Edwards is a female undergoing a sex change and prefers the male pronoun."

[3] "'[E]xpungement' and 'expunction' mean the same thing." ***State v. Arberry,*** 2018 WI 7, ¶1 n.2, 379 Wis. 2d 254, 905 N.W.2d 832

[4] While this case was pending on appeal, the Wisconsin Supreme Court decided ***Arberry***, as follows: "We conclude that a defendant may not seek expunction after sentence is imposed because both the language of WIS. STAT. § 973.015 and ***Matasek*** require that the determination regarding expunction be made at sentencing." ***Id.***, 379 Wis. 2d 254, ¶16. (In ***State v. Matasek***, 2014 WI 27, ¶6, 353 Wis. 2d 601, 846 N.W.2d 811, the Wisconsin Supreme Court held that the phrase "at the time of sentencing" in § 973.015 meant at the sentencing proceeding.)

As a result of the release of the ***Arberry*** decision, Edwards requested an opportunity to file a supplemental brief addressing whether ***Arberry***'s holding determined the result of his inherent powers argument. We gave both parties the opportunity to file briefs on the impact of ***Arberry*** on their arguments. Ultimately we do not reach the issue of ***Arberry***'s applicability because we resolve on another ground, as explained above.

[5] It is well established that this court need resolve only the dispositive issue. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (holding that an appellate court need not decide an issue if the resolution of another issue is dispositive).

to properly exercise its discretion in denying expunction at sentencing. Accordingly, we reverse that portion of the postconviction order denying expunction and remand to that court for a new hearing on expunction eligibility.

BACKGROUND

¶3 Edwards was initially charged with one count of strangulation and suffocation, domestic abuse; and one count of misdemeanor battery, domestic abuse for events that occurred on January 30, 2015. The complaint alleged that the police were called to Edwards' home, where he lived with his girlfriend, L.H., because another resident of their building reported hearing a woman being beaten for quite some time. L.H. then reported to police that Edwards, her boyfriend, struck her and choked her to the point of her losing consciousness. She said Edwards was upset because a man had approached L.H. earlier in the evening when they were at a tavern. L.H. told the police that she feared she was going to die and had to bite Edwards to break free. She ran toward the front door of the apartment and began to scream for help, but Edwards dragged her back into the apartment and began to strike her in the head and face, causing a bloody nose and bruising.

¶4 The responding officer observed fresh blood and damage to clothes that L.H. said she had been wearing, as well as marks on the victim's neck and a bite mark on her elbow. When the officer met with L.H. the next day, she observed that L.H.'s eye was then black and bruised.

¶5 Subsequently, on August 7, 2015, an amended information was filed adding a third count of disorderly conduct, domestic abuse.

¶6 Pursuant to plea negotiations, on August 24, 2015, Edwards entered a guilty plea to count three, disorderly conduct, and the other two charges were dismissed. The State agreed to recommend probation with terms and conditions up to the court. As to the factual basis, defense counsel advised the court that Edwards did not agree with most of the complaint. However, he did agree that he and L.H. had gotten into a shouting match that awakened the neighbors and aggravated the situation. The trial court asked Edwards personally if that statement was accurate and he agreed that it was. The trial court then found there was a factual basis for the plea to count three and dismissed counts one and two. There was no mention of expunction at the plea proceeding.

¶7 At sentencing on September 16, 2015, the State made the agreed upon recommendation of probation and defense counsel requested expungement. The trial court placed Edwards on probation, but denied the request for expungement. Further facts from sentencing will be discussed below.

¶8 Edwards filed a postconviction motion after he successfully completed probation, asking that the court use its *inherent authority* to grant expunction at that juncture. Alternatively, Edwards requested reversal of the expunction denial based on an improper exercise of discretion. The State contended that the court lacked authority to expunge the conviction at that point. The postconviction court denied expunction, without specifically mentioning its exercise of discretion.[6] This appeal follows.

[6] The postconviction motion also raised a challenge to the imposition of the domestic abuse assessments. Appellant has not pursued that issue on appeal, so we do not address it.

DISCUSSION

¶9 We reach only one of the two issues Edwards presents on appeal—whether the sentencing court properly exercised its discretion in denying expunction at the time of sentencing—because our resolution of that issue is dispositive. We leave for another day the question of whether a circuit court has *inherent authority* to grant expunction after sentencing.[7]

I. Standard of review.

¶10 A circuit court is not required to consider expunction at the time of sentencing. Expunction is possible in only a small subset of cases under WIS. STAT. § 973.015: those where the defendant is under age 25 at the time of the commission of the offense and the penalty exposure is less than six years maximum imprisonment. And even in that subset, there is no requirement that the circuit court permit expungement. Rather, the circuit court *may* order expungement under the following standard: "if the court determines the person will benefit and society will not be harmed by this disposition."

¶11 WISCONSIN STAT. § 973.015(1m)(a) provides in relevant part:

> [W]hen a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.

[7] We note that Edwards argues that ***Arberry*** did not address whether circuit courts have inherent authority to grant expunction after sentencing. The State takes the opposite view.

¶12 Whether to grant expunction upon the successful completion of a sentence is subject to appellate review for a proper exercise of discretion. ***State v. Matasek***, 2014 WI 27, ¶6, 353 Wis. 2d 601, 846 N.W.2d 811. As we said in ***State v. Helmbrecht***, 2017 WI App 5, 373 Wis. 2d 203, 891 N.W.2d 412, "[A] court will weigh the benefit of expungement to the offender against the harm to society." ***Id.***, ¶8 (citing ***Matasek***, 353 Wis. 2d 601, ¶41). Discretion contemplates a process of reasoning based on the facts or reasonable inferences in the record, guided by proper legal standards that lead to a reasonable conclusion. *See* ***Helmbrecht***, 373 Wis. 2d 203, ¶11 (citing ***State v. Delgado***, 223 Wis. 2d 270, 280, 588 N.W.2d 1 (1999)). It is the defendant's burden to overcome the presumption that the court acted reasonably. ***Id.*** On review, we do not disturb this sentencing decision unless the circuit court erroneously exercised its discretion. ***Id.***, ¶8 (citing ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197).

¶13 In this case, determining whether proper discretion was exercised also requires us to consider principles of statutory construction. We begin with the language of the statute, without taking a particular word or phrase out of context, to determine the intent of the legislature as a whole. ***Matasek***, 353 Wis. 2d 601, ¶12. "We have repeatedly held that the utterance of 'magic words' is not the equivalent of providing a logical rationale. Rather, the sentencing record should reflect the process of reasoning articulated in ***Gallion***." ***Helmbrecht***, 373 Wis. 2d 203, ¶12.

II. The trial court failed to properly exercise its discretion when it denied expungement.

The State's remarks.

¶14 The State advised the trial court at sentencing that the police were called to the scene by two calls from neighbors in the building reporting that they heard a female screaming "help, help" and they believed that someone was being beaten. When the officers arrived at the apartment, they heard a fight and upon entry into the apartment observed the victim, L.H., "bleeding fairly heavily from her nose." L.H. gestured to the officers to follow her into a back room where they encountered Edwards. Both individuals were in states of undress. L.H. told the officers that the fight began in a bar over a man. When they arrived at their apartment, L.H. said Edwards became aggressive with her and she tried to run out the door, but Edwards grabbed her and caused the bloody nose. The prosecutor acknowledged that Edwards had a scratch on his nose and added that he believed both parties were intoxicated.

¶15 The prosecutor told the court that the reasons for the plea offer were that on the day of trial, although L.H. was present, the State was advised of a statement by L.H. recanting the accusation that it had not previously been aware of. Additionally, the State informed the court that Edwards had no prior domestic abuse referrals, no conviction record, and was employed. The prosecutor said he believed that there were personal violence issues that could be addressed by probation and that the victim was supportive of this resolution.

Trial counsel's remarks.

¶16 Trial counsel asked the court to sentence Edwards to four days in jail, time served, saying that he did not need probation because he had gone to

anger management on his own and successfully completed it. He provided a certificate of completion for the court. Counsel also argued that Edwards had suffered enough, having lost his long-time job as a baggage handler at the airport due to the initial felony charge. He also lost his home due to the job loss. He said that Edwards always contended that L.H.'s nose was hurt at the bar when she fought with a man there. He said that Edwards claimed that the fight was screaming and pushing only. Counsel also told the court that L.H. recanted from her initial report to police and then recanted the recant on the day of trial.

¶17 Counsel argued that his twenty-three-year-old client, with no arrest or conviction record, had moved on from L.H. and had learned a valuable lesson. He spent four days in jail, which counsel said was a real eye-opener for him, saying that as a transgender person, that was very difficult for him. Counsel then made the first mention of expunction, simply asking the court to "consider" it.

¶18 Edwards exercised his allocution rights and apologized, saying he was very ashamed of what he did. He acknowledged what L.H. went through saying: "What [L.H.] went through for coming to court, I never been in a situation like this and honestly I never want to be in a situation like this again."

The sentencing court's remarks.

¶19 As to the facts for sentencing, the court asked the attorneys whether counts one and two were dismissed and read-in or outright dismissed. The State, although it had no notes on the question, agreed with defense counsel that they were "straightly dismissed." The court then expressed confusion as to whether it was sentencing on a verbal fight only (as represented by defense counsel) or on the other allegations of physical abuse in the complaint.

¶20 The court, apparently attempting to weigh the State's request for probation versus the defense request for four days time served, tried to sort out what really happened in the fight so that it could fashion the right sentence to prevent a reoccurrence. To that end, the court reasoned that if it was a verbal fight only, then the anger management counseling already completed should suffice to prevent a reoccurrence. But, the court noted that if the facts were closer to those attributed to L.H. in the complaint, then:

> [I]t is not at all about when I send you to jail or probation, but it is about you trying to make sure that you get some help so that you understand how you are reacting in a relationship with somebody else and how you treat that person, because if in fact you acted closer to the way she described it, then I fear you will be back in court in the next relationship you're in because you haven't figured out what you did was wrong in anger management, won't do anything for that kind of behavior because that isn't about anger, that is about controlling the other person. And so, that is my concern. Do I waste –
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> Am I wasting your time and the counselor's time requiring you to go to a batterer's treatment program, or am I giving you an opportunity to make sure you don't come back to court for this kind of a charge again? That's the issue that I, frankly, am uncertain about.

¶21 Next the court addressed the expungement issue saying how unhappy the court was with the legislature's and Department of Correction's handling of the issue. Afterwards, the court simply denied expungement for Edwards. The entirety of the court's comments on expunction follow:

> I, as to the expungement issue, I have said this before, I don't know if your attorney happened to be in court when I said it, I am very unhappy with the state of the law in Wisconsin, I strongly support some legislation that has been drafted to try and find sponsors to get it through the legislature that will change the expungement statute to give judges the discretion to make that call at the end of the sentence, whether it is probation or whatever, so that judges can more properly make that call based on whatever it is

> the defendant does to justify it as opposed to some kind of line request now, and I don't mean that in a pejorative sense or a criticism to Defense Counsel, they have to do it, now is the time that the statute requires it.
>
> But the fact is, if I say yes, if you successfully complete probation, I don't – it doesn't really mean that, because the Department of Corrections will discharge you from probation if you make it through the end of the period of probation without getting revoked regardless of whether you have done all the things that the judge asked you to do.
>
> Whether you go to counseling, pay fines or costs, they will discharge you and that qualifies you automatically for expunction or expungement without – without them – without you actually having successfully completed probation and that is the problem that I am and other judges have, I am not sure you really care about that.

¶22 Then, the court pronounced its sentence of sixty days jail, with four days credit, stayed the sentence, and placed Edwards on nine months probation, leaving any conditions or programs up to the probation agent. Finally the court addressed expungement this way: "I am not going to find expungement is appropriate in this case."

¶23 Edwards' postconviction motion raised the same two issues he now raises on appeal: (1) a request for expungement after sentencing; and (2) a request for reversal of the expunction denial based on improper exercise of discretion. The court addressed only the question of whether expunction is available after sentencing generally and within the context of the court's inherent powers. It said nothing about whether it had properly exercised its discretion at sentencing.

¶24 Edwards argues that the trial court erroneously exercised its discretion when it denied his request for expunction at sentencing. In support of his argument he relies, as does the State, on the legal principles of proper exercise of discretion in ***Helmbrecht***, where this court said when denying a request for

expunction, "[T]he sentencing court should set forth in the record the facts it considered and the rationale underlying its decision for deciding whether to grant or deny expungement." ***Id.*** Additionally, we explained that more than just the "magic words" from the statute must be spoken—i.e., "the person will benefit and society will not be harmed." *See* WIS. STAT. § 973.015(1m)(a)1. We explained that the proper exercise of discretion requires facts from the record and logical reasoning, leading to the court's conclusion denying or granting expungement:

> Thus, in exercising discretion, the sentencing court must do something more than simply state whether a defendant will benefit from expungement and that society will or will not be harmed. We have repeatedly held that the utterance of "magic words" is not the equivalent of providing a logical rationale. Rather, the sentencing record should reflect the process of reasoning articulated in ***Gallion***.

Id.

¶25 The sentencing court in ***Helmbrecht*** denied the defendant's request for expungement after discussing the sentencing factors generally and concluding that it could not find that society would not be harmed. ***Id.***, ¶4. In its postconviction affirmance of the denial of expungement, the court explained more fully that the defendant's possession of multiple types of drugs, her juvenile drug-related offense, her admission of long-term methamphetamine use, and the fact that Helmbrecht was a medical professional led the court ultimately to conclude that society had a compelling interest in deterring and punishing methamphetamine use. Those interests "would be compromised if this matter were expunged." Accordingly, the court concluded that the harm to society outweighed the benefit to Helmbrecht. ***Id.***, ¶14.

¶26 We agree with Edwards that the ***Helmbrecht*** court's process of reasoning based on facts in the record stands in stark contrast to this record,

specifically, the trial court's complete absence of: (1) mention of any facts in the record regarding the allegations against Edwards as the effect of expungement; and, (2) any reasoning of benefit/harm in his case. The only expungement comments the court made at sentencing were related to its frustrations with the current statute, its requirement that a trial court decide *before* a sentence is served whether the defendant will benefit and/or society will be harmed, and the manner in which the Department of Corrections executes its responsibilities on reporting non-compliance with conditions of probation. We take no position on the validity of the court's frustrations; we note only that they do not satisfy the requirements of a proper exercise of discretion.

¶27 It is true that the court did talk about Edward's crime, expressed confusion on whether it was sentencing for a verbal or a physical fight, and acknowledged his completion of anger management. But it did so in the context of weighing the probation recommendation of the State versus the four days time served recommendation of defense counsel. It made no comment about expungement at that point. Nor did it tie its one-sentence denial of expungement later to any WIS. STAT. § 973.015 benefit/harm analysis. And notably, the court said nothing at all about its exercise of discretion in its postconviction ruling.

¶28 The State argues on appeal that the court's speech about its frustration with the statute and its silence on the benefit/harm analysis allows for a reasonable inference that the court could not find any reasons in the record to make rulings either way. Perhaps that was what the court was thinking. But we see no words of the court that show what the court thought about the merits of expungement in this case. And we must follow our precedent. ***Helmbrecht*** is clear that the trial court must demonstrate, through its words, that it considered the

benefit/harm analysis of WIS. STAT. § 973.015 and must articulate a process of logical reasoning leading to its conclusion. This the court did not do.

¶29 Accordingly, we reverse that portion of the postconviction order denying expungement and remand for a hearing on the question of expunction eligibility.

By the Court.-Judgment and order affirmed in part; reversed in part and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.