COURT OF APPEALS
DECISION
DATED AND FILED

April 13, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal Nos. 2009AP1407-CR
2009AP1408-CR

Cir. Ct. Nos. 2007CF5971 and 2008CF865

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOIQUIA S. WILEY,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Joiquia S. Wiley appeals from amended judgments of conviction entered upon his guilty pleas to one count of substantial battery and

one count of intimidating a witness. He also appeals from an order denying postconviction relief.[1] The only issue presented is whether the circuit court properly imposed a condition of extended supervision barring Wiley from contact with the two children that he fathered with the victim of his crimes. We affirm.

BACKGROUND

¶2 On November 30, 2007, Wiley assaulted M.K. in the home they shared after she was late to pick him up from work. According to the criminal complaint, Wiley punched M.K. in the face and body, hit her with an iron and other household objects, strangled her with a belt, and kicked her repeatedly. Wiley paused in the attack to permit M.K. to give their seven-month-old infant a bottle, but he then ordered her to "put the baby back in the swing because [he was] not through with [her] yet." Wiley next burned M.K. with a heated spoon and beat her with a chair and a metal pole. When the metal pole broke, he forced it into her anus. M.K. contacted the police when Wiley left the apartment.

¶3 The police arrested Wiley on December 4, 2007. Two days later, the State filed a criminal complaint charging Wiley with two counts of second-degree sexual assault and one count of false imprisonment.

¶4 Wiley was in custody for three days before he made his initial court appearance in the case. During that period, he placed telephone calls to M.K. and

[1] We granted Wiley's motion to consolidate his appeals in these related matters. In the circuit court case underlying appeal No. 2009AP1407-CR, Wiley pled guilty to substantial battery. In the circuit court case underlying appeal No. 2009AP1408-CR, Wiley pled guilty to intimidating a witness. The circuit court's single order denying postconviction relief addressed matters common to both cases and is captioned with both circuit court case numbers. The order is entered in the record of case No. 2009AP1407-CR.

to third parties in an attempt to dissuade M.K. from assisting the State in prosecuting him. On December 7, 2007, Wiley made an initial appearance before a court commissioner who ordered that Wiley have no contact with M.K., directly or through other people. Wiley remained in jail unable to post bail. During the period from December 8, 2007, through December 13, 2007, Wiley contacted M.K. on multiple occasions, directly and through third parties, in a continued effort to dissuade M.K. from testifying in the case. The State charged Wiley with seven counts of intimidating a witness.

¶5 Pursuant to a plea agreement, Wiley pled guilty to an amended charge of substantial battery and to one count of intimidating a witness. The circuit court imposed eighteen months of initial confinement and twenty-four months of extended supervision for substantial battery, and the circuit court imposed thirty months of initial confinement and thirty-six months of extended supervision for intimidating a witness. The court ordered Wiley to serve the two sentences consecutively.

¶6 As a condition of Wiley's extended supervision, the circuit court ordered Wiley to have no contact with M.K. or her family. Wiley filed a postconviction motion seeking clarification of the condition, claiming uncertainty as to exactly who he could not contact. He also moved for postconviction relief from the condition barring him from contact with his children born to M.K. The circuit court entered an order that Wiley is barred from contact with M.K. and "her

immediate family, including the children she and [Wiley] share in common."[2] Wiley appeals.

DISCUSSION

¶7 Wiley challenges only the condition of extended supervision barring him from having contact with the two children he fathered with M.K. "'Extended supervision is akin to probation.' Therefore, 'case law relating to the propriety of conditions of probation is applicable to conditions of supervision.'" ***State v. Harris***, 2008 WI App 189, ¶12, 315 Wis. 2d 537, 763 N.W.2d 206 (citations and two sets of brackets omitted).

¶8 We review conditions of probation to determine whether the circuit court properly exercised its discretion. ***State v. Stewart***, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165. We consider the validity and reasonableness of such conditions "measured by how well they serve their objectives: rehabilitation and protection of the state and community interest." ***Id.*** We search the record for reasons to sustain a circuit court's exercise of sentencing discretion. ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

¶9 The State and Wiley agree that the condition of community supervision challenged in this case limits Wiley's exercise of the constitutional right to rear his children. *See* ***Santosky v. Kramer***, 455 U.S. 745, 753 (1982)

[2] The circuit court granted Wiley's postconviction motion to vacate a deoxyribonucleic acid analysis surcharge imposed pursuant to WIS. STAT. §973.046(1g) (2007-08). The State has not cross-appealed from that order. All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

(recognizing that parents have a fundamental liberty interest in the care, custody, and management of their children).

> [C]onditions [of supervision] may impinge upon constitutional rights as long as [the conditions] are not overly broad and are reasonably related to the person's rehabilitation. Convicted felons do not enjoy the same degree of liberty as those individuals who have not been convicted of a crime. Whether a particular condition violates a defendant's constitutional right is a question of law [that] this court reviews de novo.

Stewart, 291 Wis. 2d 480, ¶12 (citations omitted).

¶10 Wiley insists that his children were not victims of the offenses in this case and that the record does not show that he has ever been physically abusive towards children. He concludes that the condition barring contact with his children is therefore not reasonably related to his rehabilitation or to protection of society. We are not persuaded.

¶11 We agree with the State that the condition barring contact between Wiley and his children is reasonably related to Wiley's rehabilitation because the condition serves to "motivat[e] his consciousness of all the consequences of his crime." ***State v. Beiersdorf***, 208 Wis. 2d 492, 503, 561 N.W.2d 749 (Ct. App. 1997). During sentencing, the circuit court discussed Wiley's prior conviction for bail jumping and his actions in attempting to intimidate the victim in this case. The court observed that Wiley "do[es]n't follow the rules" and the court emphasized to Wiley: "[t]here are consequences to your actions .... That young lady that you beat, the victim in this case, does not need you. And the court is going to order you to stay away from her and her family and have no direct or indirect contact with her whatsoever." The circuit court thus imposed the condition to achieve the "core aspects of rehabilitation—making the offender

realize that there are consequences to what he or she does." *See* ***State v. Agosto***, 2008 WI App 149, ¶13, 314 Wis. 2d 385, 760 N.W.2d 415.

¶12 The condition prohibiting Wiley from contact with his children also unquestionably promotes the protection of state and community interests. Although Wiley contends that he did not victimize children, he strangled M.K. and drove a metal pole into her rectum while his seven-month-old infant was present.[3] When M.K. sought Wiley's permission to tend to the child, Wiley limited her ability to do so because he had not yet finished assaulting her. Wiley's conduct therefore endangered his child by restraining the child's caretaker, and the condition barring contact with his children avoids exposing them again to the same danger. Moreover, as the State points out, the condition ensures that Wiley's children are shielded from witnessing violence between their parents. Abundant research supports the proposition that child witnesses to domestic violence are secondary victims who are at risk to suffer long-term consequences from the experience. *See* Audrey E. Stone and Rebecca J. Fialk, ***Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse***, 20 HARV. WOMEN'S L.J. 205, 209 & nn.7-26 (1996) (observing that "the harmful effects of witnessing domestic violence have been well-documented" and citing the literature); *see also* Lisa Bolotin, ***When Parents Fight: Alaska's Presumption Against Awarding Custody to Perpetrators of Domestic Violence***, 25 ALASKA L. REV. 263, 270-272 and nn. 24-38 (2008) (citing and discussing the literature

[3] At the time of Wiley's assault on M.K., she was two weeks pregnant with a second child fathered by Wiley. The State asserts: "[i]t appears likely that Wiley did not know about M.K.'s pregnancy" at the time of the assault.

showing that children who witness domestic violence may experience adverse physical and psychological effects).

¶13 Additionally, the record reflects that Wiley's assault on M.K. is related to his ongoing difficulties in controlling his rage. The presentence investigation report discusses a prior incident of domestic abuse in which Wiley attacked another woman, and the author of the report describes him as a "ticking time bomb waiting for an explosion." The facts thus support the conclusion that barring Wiley from contact with his children is reasonably necessary to protect them from potential harm. *See* ***State v. Koenig***, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499 ("While rehabilitation is the goal of probation, judges must also concern themselves with the imperative of protecting society and potential victims.").

¶14 Wiley asserts that the condition barring contact with his children is overbroad. He contends that the circuit court could have sufficiently protected the safety of his children by ordering supervised visitation.[4] Wiley's position is based on mere speculation. He did not demonstrate that third-party involvement would protect his children from his antisocial behavior, and the record does not support such a contention. The presentence investigation report reflects that the prelude to Wiley's attack on M.K. occurred at a public mall where Wiley "was yelling so

[4] In his brief-in-chief, Wiley reminded this court that his children are alleged to be in need of protection or services in separate litigation proceeding under the Children's Code, WIS. STAT. ch. 48. Wiley suggested that the sentencing court might therefore have allowed the circuit court presiding in the Children's Code proceeding to decide whether Wiley should have contact with his children during his extended supervision. In his reply brief, however, Wiley concedes that "it is unknown whether the CHIPS action involving [his] children will continue to be in effect upon his release." Accordingly, he relies on the contention that the sentencing court should have imposed a "more narrowly drawn" condition of extended supervision in this case that "could be administered by the department [of corrections]."

loud that he created a disturbance .... He was calling [M.K.] a stupid b**** and saying that she could not do anything right." Further, Wiley was in jail when he repeatedly contacted M.K., directly and through others, despite a court order that he not do so. Nothing in the record shows that unidentified supervisors could more effectively control Wiley than did a court order coupled with incarceration.

¶15 We are satisfied that the condition barring Wiley from contact with his children is reasonable, appropriate, and no broader than necessary to achieve the goals of rehabilitation and protection of society. 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.