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DISTRICT II

October 23, 2024

To:

Hon. Jason A. Rossell
Circuit Court Judge
Electronic Notice

Kathleen Henry
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Christine A. Remington
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP1767-CR

State of Wisconsin v. Rene M. Palma (L.C. #2020CF557)

2023AP1768-CR

State of Wisconsin v. Rene M. Palma (L.C. #2020CF1210)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated appeals, Rene M. Palma appeals judgments of the circuit court, entered on his no-contest and guilty pleas, convicting him of five counts of possession of a firearm by a felon, one count of possession of a machine gun, and one count of possession of a firearm silencer. He also appeals an order denying postconviction relief. On appeal, Palma argues the circuit court erroneously exercised its sentencing discretion when it denied him eligibility for the Substance Abuse Program (“SAP”).¹ Based upon our review of the briefs and

¹ The parties and the circuit court refer to the SAP as the earned release program. However, the legislature renamed the program from the earned release program to the SAP. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 302.05 (2021-22).

(continued)

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In 2020, Palma, as a convicted felon, bought six firearms from an undercover agent. When the agent tried to arrest him, Palma fled. After his arrest, police discovered three additional firearms and three firearm silencers at Palma's house. He also possessed cocaine and marijuana at his place of employment. Pursuant to a plea agreement, Palma pled to five counts of possession of a firearm by a felon, one count of possession of a machine gun, and one count of possession of a firearm silencer.

At sentencing, the circuit court first discussed the relevant sentencing factors. It told Palma it would use those factors to "fashion[] a sentence that deals with rehabilitation, punishment, deterrence or community safety." The circuit court discussed that Palma knew he was not supposed to possess firearms, and he made a conscious choice to do so anyway. The court also referenced the fact that the guns Palma sold were used to commit crime. The court highlighted Palma's criminal history. It then noted that a number of people had sent in supportive letters. However, the court was concerned that even with all the family and community support, Palma still committed the crimes. Ultimately, the court determined a prison sentence was appropriate. It explained:

I don't find there are rehabilitative needs to be honest with you.
I'm sentencing you for three reasons:

One, because you made a bad choice and there has to be
consequences for bad choices, and it was a pretty big bad choice.

Secondly, for deterrence. People have to know that if you're a felon in possession of a firearm or you're engaged in this behavior, the punishment is you go to prison. So hopefully other individuals who go I don't want to go to prison so therefore I will not commit these offenses and the third reason is, to some degree, for public safety because I'm still scratching my head because everything else about you, Mr. Palma, says this should have never occurred.

As relevant, the circuit court also denied Palma's eligibility for the SAP.

Palma filed a postconviction motion, alleging in part that the circuit court erroneously exercised its discretion by failing to make him eligible for the SAP. He asserted the circuit court "did not give enough weight to the great deal of substance abuse problems Mr. Palma has had, as shown in the prior record and information provided in the PSI" and "failed to recognize that the [SAP] addresses 'criminal thinking' as well as substance abuse disorders."

Following a hearing, the circuit court denied Palma's motion. The court explained that Palma's sentence was based on punishment, deterrence, and public safety. The court stated Palma's sentence was not primarily based on the need for rehabilitation. Palma appeals.

Sentencing decisions—including decisions on a defendant's eligibility for the SAP—are discretionary; this Court reviews only whether the circuit court erroneously exercised its discretion. See *State v. Owens*, 2006 WI App 75, ¶7, 291 Wis. 2d 229, 713 N.W.2d 187. "In imposing sentence, the court must consider at least the three primary factors or objectives: the gravity and nature of the offense, including the effect on the victim; the character and rehabilitative needs of the offender; and the need to protect the public." *Id.*, ¶8. We will affirm the circuit court's program-eligibility determination if "the overall sentencing rationale ... justifies the ... determination." *Id.*, ¶9.

On appeal, Palma argues the circuit court erroneously exercised its discretion by failing to make him eligible for the SAP. He contends the circuit court failed to give enough weight to Palma's substance abuse problems, failed to recognize that the program could be used to address Palma's "criminal thinking"; and failed to consider Palma's rehabilitative needs.

We disagree. There is no requirement that a circuit court make a defendant eligible for the SAP simply because the program would be helpful or relevant to the defendant's needs. *See Owens*, 291 Wis. 2d 229, ¶¶7, 9 (program eligibility left to the circuit court's discretion). There is also no requirement that a circuit court fashion a sentence that focuses primarily on a defendant's rehabilitative needs. *See State v. Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197 (the circuit court has discretion over which objectives it gives the greatest weight in each case). This is especially true when the circuit court determined at sentencing that Palma failed to establish he had rehabilitative needs.

Palma's rehabilitative needs were not one of the priorities in the circuit court's sentence. As explained by the court, punishment, deterrence, and protection of the public were the paramount sentencing objectives in Palma's sentence. *See Gallion*, 270 Wis. 2d 535, ¶¶41-42. It then determined Palma was not eligible for the SAP. We conclude the circuit court did not erroneously exercise its sentencing discretion by focusing on punishment, deterrence, and protection of the public and denying eligibility for the SAP. *See id.* Therefore,

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals