



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT I

April 30, 2024

To:

Hon. Jean M. Kies
Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Jeffrey W. Jensen
Electronic Notice

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

2023AP433-CR	State of Wisconsin v. Lazarion Maurice Gaillard (L.C. # 2020CF1094)
2023AP434-CR	State of Wisconsin v. Lazarion Maurice Gaillard (L.C. # 2021CF408)
2023AP435-CR	State of Wisconsin v. Lazarion Maurice Gaillard (L.C. # 2021CF3298)
2023AP436-CR	State of Wisconsin v. Lazarion Maurice Gaillard (L.C. # 2021CF3445)

Before Donald, P.J., Geenen and Colón, 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 matters, Lazarion Maurice Gaillard appeals judgments, entered on his guilty pleas, convicting him of seventeen crimes. He also appeals an order denying his motion for postconviction relief. The sole issue before us is whether the circuit court properly exercised its sentencing discretion. Based upon our review of the briefs and records, we

conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21 (2021-22).¹

The State charged Gaillard with dozens of offenses in four criminal cases. As Gaillard sums up in his appellate brief: “In a nutshell, Gaillard repeatedly stole cars, fled from the police, and burglarized homes. In all except one of the offenses, Gaillard acted alone.” He pled guilty to seventeen charges: one count of child abandonment; one count of possessing a firearm by an adjudicated delinquent; five counts of burglary; two counts of operating a motor vehicle without the owner’s consent; four counts of theft; and four counts of bail jumping. In exchange, the State agreed to dismiss and read-in more than fifty counts for the purpose of sentencing.

Prior to sentencing, Gaillard filed a memorandum and a five-page psychological evaluation in an effort to highlight what he deemed were mitigating factors. The psychologist who evaluated Gaillard noted his “issues with impulsivity, focus, and learning.” The psychologist additionally described Gaillard, who was twenty years old, as presenting “as an emotionally and cognitively immature, depressed, anxious, and impulsive young man in comparison to same aged peers. This demeanor has likely negatively influenced his social circle including being attracted to other individuals with similar struggles and bravado.”

At the beginning of the sentencing hearing, the circuit court stated that it had reviewed the parties’ submissions. Trial counsel’s sentencing remarks focused on Gaillard’s educational and cognitive deficiencies and his difficult life experiences.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In arriving at its sentences, the circuit court stressed the impact that Gaillard’s crimes had on the victims and the community as a whole. The court recognized that Gaillard has “borderline intellectual functioning” and “some mental health disorders[.]” After noting Gaillard’s ADHD diagnosis, the court remarked: “There are a lot of people that have ADHD that take their Ritalin, and they function just fine in the community without stealing from others.” The court ultimately imposed sentences totaling fifteen years of initial confinement and ten years of extended supervision.

Gaillard filed a postconviction motion seeking resentencing on grounds that the circuit court erroneously exercised its discretion by not giving enough weight to his mental health as a mitigating factor. In a written decision, the court explained that it considered Gaillard’s mental health in formulating Gaillard’s sentences “but did not assign substantial weight to that factor given the number and nature of [Gaillard’s] crimes, his escalating criminal conduct, and the *extreme* level of victimization he perpetrated in the community.” (Underlining omitted.) This appeal follows.

Gaillard continues to argue that the court erred when it failed to explain the reasons “for assigning almost no weight” to his mental health issues. Gaillard contends that the circuit court’s only explanation was that other people have ADHD and they do not go around stealing from others. He asserts: “This is not a rational basis to discount Gaillard’s significant history of mental illness and cognitive disability; and, further, it is not an individualized sentence[.]”

The rule is well settled that sentencing lies within the circuit court’s discretion. *State v. Harris*, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. In challenging the court’s exercise

of discretion, a defendant shoulders a heavy burden. *Id.* This court normally will sustain an exercise of sentencing discretion if the record reflects that the circuit court applied the proper legal standards, considered the relevant facts, and used a process of reasoning to reach a result that a reasonable judge could reach. *State v. Cummings*, 2014 WI 88, ¶75, 357 Wis. 2d 1, 850 N.W.2d 915.

In exercising its sentencing discretion, “the circuit court must state on the record the facts on which it relies and its reasons for choosing the imposed sentence in light of its consideration of the three required factors: the protection of the public; the gravity of the offense; and the rehabilitative needs of the defendant.” *State v. Bolstad*, 2021 WI App 81, ¶18, 399 Wis. 2d 815, 967 N.W.2d 164. We defer to the circuit court’s “great advantage in considering the relevant factors and the demeanor of the defendant.” *State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

We have explained that “[a] court, after giving consideration to the relevant sentencing factors, may give disproportionate or controlling weight to a single factor.” *State v. Longmire*, 2004 WI App 90, ¶39, 272 Wis. 2d 759, 681 N.W.2d 534, *abrogated on other grounds by State v. Harbor*, 2011 WI 28, ¶48, 333 Wis. 2d 53, 797 N.W.2d 828. Additionally, when a defendant challenges a sentence, the postconviction proceedings afford the circuit court an additional opportunity to explain the sentencing rationale. *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

Here, the records reflect that the circuit court considered the relevant sentencing factors and assigned controlling weight to the need to protect the public. The court addressed the

gravity of the offenses stemming from Gaillard’s “crime spree,” listing the details of many of the counts and the harm Gaillard caused specific victims. The court referenced the psychological evaluation that was submitted and addressed Gaillard’s character, noting his difficult home life and the abuse he suffered. The court concluded Gaillard had been given opportunities for programming and educational help but had not taken advantage of them. The court addressed the danger to the community in light of Gaillard’s escalation to carrying guns while stealing. In its decision resolving Gaillard’s postconviction motion, the circuit court again explained its emphasis on Gaillard’s escalating criminal conduct, and the extreme level of victimization he perpetrated in the community. The records reflect that the circuit court considered appropriate factors and properly exercised its discretion to impose individualized sentences based on the facts.

Gaillard’s disagreement with the weight that the court assigned to the relevant factors is not a basis for relief. The circuit court was not required to give greater weight to Gaillard’s mental health issues and cognitive disabilities than to finding that he posed a danger to the community. Although the circuit court did not assess the sentencing information in the manner that Gaillard would have preferred, that is not an erroneous exercise of discretion. *See State v. Prineas*, 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206 (explaining that “our inquiry is whether discretion was exercised, not whether it could have been exercised differently”).

For all the foregoing reasons,

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals