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DISTRICT I

November 19, 2024

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

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

Taylor N. Haefele
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Daniel J. O'Brien
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Cole Daniel Ruby
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1124-CR State of Wisconsin v. Daetwan C. Robinson (L.C. # 2019CF4856)

Before White, C.J., Donald, P.J., and Geenen, J.

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).

Daetwan C. Robinson appeals the judgment of conviction and the order denying his postconviction motion.[1] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).[2] We affirm.

[1] The Honorable Janet C. Protasiewicz accepted Robinson's pleas and sentenced him. The Honorable Ellen R. Brostrom issued the order denying Robinson's postconviction motion.

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Background

Robinson was involved in a hit-and-run accident that claimed the lives of two young children and injured a third. He ultimately pled guilty to two counts of hit and run causing death and one count of hit and run causing great bodily harm. Six remaining felony charges were dismissed but read into the record for sentencing purposes.[3] For the two counts of hit and run causing death, the circuit court imposed consecutive prison sentences of ten years of initial confinement followed by five years of extended supervision, and for the count of hit and run causing great bodily harm, the court imposed a concurrent sentence of three years of initial confinement and three years of extended supervision.[4]

Postconviction, Robinson sought resentencing, arguing that the circuit court erroneously exercised its discretion. The circuit court denied Robinson's motion, and this appeal follows. Additional background information relevant to the issues raised on appeal will be included below.

[3] Robinson faced nine felony counts in this matter: two counts of first-degree reckless homicide; one count of first-degree reckless injury causing great bodily harm; two counts of hit and run causing death; one count of hit and run causing great bodily harm; two counts of operating a motor vehicle with a suspended license causing death, and one count of operating a motor vehicle with a suspended license causing great bodily harm.

[4] The amended judgment of conviction in this matter indicates that for the charge of hit and run causing great bodily harm, the circuit court imposed a sentence that was to run consecutively to one count of hit and run causing death and concurrently with the remaining charge of hit and run causing death. The record, however, reflects that during the sentencing hearing, the circuit court imposed a sentence on the charge of hit and run causing great bodily harm that was to run concurrently with both of the other two charges. Because this appears to be a clerical error, upon remittitur, the circuit court shall enter an amended judgment of conviction changing the "consecutive" designation for Count 6. *See* ***State v. Prihoda***, 2000 WI 123, ¶¶26-27, 239 Wis. 2d 244, 618 N.W.2d 857.

Discussion

Appellate review of a sentencing decision is limited to determining whether the circuit court properly exercised its discretion when it imposed sentence. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant." ***Id.***, ¶18 (citation omitted).

When imposing a sentence, the circuit court must consider three primary sentencing factors: (1) the protection of the public; (2) the gravity of the offense; and (3) the character of the defendant. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.. The court decides how best to weigh each of these factors and is charged with providing an explanation on the record for the sentence imposed, but "the exercise of discretion does not lend itself to mathematical precision." ***Gallion***, 270 Wis. 2d 535, ¶¶39, 42, 49. The court must impose the minimum sentence consistent with the gravity of the offense, the rehabilitative needs of the offender, and the need to protect the public, ***id.***, ¶44, but it need not break down how each sentencing factor translates into a specific term of confinement when it explains its sentencing rationale, ***State v. Fisher***, 2005 WI App 175, ¶¶21-22, 285 Wis. 2d 433, 702 N.W.2d 56. It remains within the sentencing court's "wide discretion" to determine which factors are the most relevant and the weight to be given each factor. ***State v. Stenzel***, 2004 WI App 181, ¶¶9, 16, 276 Wis. 2d 224, 688 N.W.2d 20.

Robinson argues the circuit court erroneously exercised its discretion in failing to address his rehabilitation and when it imposed consecutive sentences for crimes that arose from the same

singular act. Robinson additionally claims the court erred when it emphasized deterrence for reckless driving even though he was not convicted of any recklessness crimes and because, according to him, the record revealed significant contravening considerations. We reject these arguments.

We begin with Robinson's argument that the circuit court "did not address or consider rehabilitation at all." Robinson asserts: "It was within the [circuit court]'s broad discretion at sentencing to underemphasize rehabilitation or with proper reasons to completely set it aside, yet not addressing rehabilitation at all is clearly an erroneous exercise of discretion." According to Robinson, the circumstances of this case compelled the court to address his rehabilitative needs. Robinson cites the fact that he was a twenty-one-year-old first-offender at the time of his sentencing. He references the hard work he did to effectuate positive change in his community and provides specific examples. As he did in his postconviction motion, Robinson asserts that his extensive and supportive community network made him an ideal candidate for rehabilitation in the community.

All of the aforementioned information was provided to the circuit court via Robinson's sentencing memorandums and in remarks made during the sentencing hearing. In sentencing Robinson, the court indicated that it was not sure whether Robinson could be rehabilitated from driving recklessly and unlicensed in the future when it stated: "Do I know if you would ever do this again? I don't know. Based on the fact that you drove a motor vehicle over and over and

over without being licensed, engaged in the kind of conduct that you engaged in[,] maybe."[5] The court continued: "You've been in custody for a substantial period of time. Does that mean you've learned your lesson and you won't do it again? I don't know that I'd bet on that either."

Ultimately, the circuit court opted to weigh more heavily the gravity of the offenses, the need to punish Robinson, and the need to deter others. The court's decision not to assess Robinson's rehabilitative needs in the manner that Robinson would have preferred is not an erroneous exercise of discretion. ***State v. Prineas***, 2009 WI App 28, ¶34, 316 Wis. 2d 414, 766 N.W.2d 206 (noting that "our inquiry is whether discretion was exercised, not whether it could have been exercised differently").

Robinson additionally takes issue with the circuit court's imposition of consecutive sentences for crimes that arose from the same singular act. Robinson contends that the court failed to adequately explain its decision to impose consecutive rather than concurrent sentences.

First, the law is clear that multiple punishments are permitted when there are multiple victims of one act. ***State v. Pal***, 2017 WI 44, ¶¶20-22, 38, 374 Wis. 2d 759, 893 N.W.2d 848; ***State v. Wise***, 2021 WI App 87, ¶31, 400 Wis. 2d 174, 968 N.W.2d 705. Second, the court confirmed at the outset of the sentencing hearing that the State was recommending consecutive prison sentences on all three counts with "a substantial amount of initial confinement," as permitted by the plea agreement. Meanwhile, Robinson argued against consecutive sentences. After listening to the sentencing remarks and detailing the factors it deemed most important, the

[5] During her sentencing remarks, the prosecutor noted that police stopped Robinson on four separate occasions in October 2019, the month the underlying accident occurred, for operating a vehicle without a license.

court imposed consecutive sentences. No further explanation was required. ***State v. Berggren***, 2009 WI App 82, ¶45, 320 Wis. 2d 209, 769 N.W.2d 110 (explaining that there is no "procedural requirement at sentencing that the [circuit] court state separately why it chose a consecutive rather than a concurrent sentence").

Lastly, Robinson takes issue with the weight the circuit court gave to deterring reckless driving in Milwaukee. Robinson insists that he did nothing wrong other than flee the scene. He emphasizes that he was convicted only of hit and run charges, not reckless driving.

At sentencing, Robinson conceded he was speeding at the time of the accident and did not have a valid driver's license. On appeal, he argues "[i]t was not clear from the facts and record before the [circuit court] that the speed and the suspended license alone amounted to reckless driving." However, two reckless homicide counts and one reckless injury count, as well as the three counts of operating without a license causing injury and death were dismissed but read into the record for sentencing purposes as part of Robinson's plea agreement with the State. Although Robinson takes issue with factual basis for the reckless homicide charges, it was not improper for the court to consider the read-in counts when imposing sentence on the three hit-and-run counts to which Robinson pled guilty. ***State v. Sulla***, 2016 WI 46, ¶¶32-33, 369 Wis. 2d 225, 880 N.W.2d 659; ***State v. Frey***, 2012 WI 99, ¶¶69-74, 343 Wis. 2d 358, 817 N.W.2d 436.

Robinson contends that improper weight was afforded to the dismissed and read-in charges given the "contravening considerations"; namely, his lack of a prior record, his character, and his age. Again, the fact that the circuit court did not weigh these considerations in the fashion Robinson would have preferred does not amount to an erroneous exercise of

discretion. ***Prineas***, 316 Wis. 2d 414, ¶34. In fashioning Robinson's sentences, the circuit court made no errors of law and considered appropriate factors.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* 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