

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent.

V. Appeal No. 13 AP 2163 CR

VENCEREMOS CRUMP,

Defendant-Appellant.

DEFENDANT-APPELLANT'S
BRIEF-IN-CHIEF

APPEALED FROM MILWAUKEE COUNTY
CIRCUIT COURT
CASE NO. 12 CM 3957
HONORABLE MEL FLANAGAN,
PRESIDING

BY: CHARLES DAVID BETTHAUSER
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STATEMENT OF ISSUES

- I. THE TRIAL COURT ERRONEOUSLY EXERCISED ITS DISCRETION WHEN IT FAILED TO CONSIDER THE NECESSARY SENTENCING FACTORS AND EXPLAIN ITS REASONING FOR IMPOSING THE DEFENDANT'S SENTENCE.

The Trial Court answered: "No."

Defendant-Appellant answers: "Yes."

Respondent would answer: "No."

STATEMENT ON ORAL ARGUMENT

Defendant-Appellant, Venceremos Crump, requests oral argument in this appeal. The issue on appeal concerns recent, binding, federal law and there is no Wisconsin decision on point.

STATEMENT ON PUBLICATION

Defendant-Appellant, Venceremos Crump, requests publication of this decision for the reason that the factual situation presented herein may establish new precedent.

STATEMENT ON THE CASE

This appeal stems from the trial court's denial of Defendant's Post Conviction Motion for Resentencing on August 27, 2013, and the Judgment of Conviction entered by the Trial Court on November 23, 2012. For purposes of this appeal, Defendant-Appellant Venceremos Crump will hereinafter be referred to as "Crump" and the State of Wisconsin will hereinafter be referred to as "State."

STATEMENT OF FACTS

On or about July 18, 2012, the Milwaukee County District Attorney's office caused to be filed a two count criminal complaint against Crump. The complaint included one count of misdemeanor battery/domestic abuse and one count of disorderly conduct/domestic abuse.

On October 23, 2012, Crump entered a plea of guilty to Count 1, misdemeanor battery, and Count 2, disorderly conduct, was dismissed and read in for sentencing purposes. Sentencing commenced on November 14, 2012. The State made a statement and entered a recommendation of six months jail stayed for a probation term of eighteen months. (25:4-6) Crump's defense counsel then made a statement and recommended a twelve month term of probation and participation in a batterer's anonymous program. (25:6-9) Crump himself then spoke, with the trial court interjecting questions as he made his statement. (25:9-15) The trial court only spoke briefly to explain its sentence.

Given that your last two convictions are somewhat remote and you did time served on those and a small amount of

time, I think you are a candidate for probation, and the Court would find that you do have probationary needs, rather significant ones, I think. Going to impose and stay a sentence of, place you on probation. Stayed sentence of 9 months.

(25:16) The trial court imposed a sentence of nine months jail, stayed, and imposed a term of eighteen months probation.

On July 1, 2013, Crump filed a Post-Conviction Motion for Resentencing. The trial court denied that motion in an order filed August 27, 2013. This appeal follows.

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY EXERCISED ITS DISCRETION WHEN IT FAILED TO CONSIDER THE NECESSARY SENTENCING FACTORS AND EXPLAIN ITS REASONING FOR IMPOSING THE DEFENDANT'S SENTENCE.

STANDARD OF REVIEW

"It is a well-settled principle of law that a circuit court exercises discretion at sentencing." *State v. Gallion*, 270 Wis. 2d 535, 549, 678 N.W.2d 197 (2004) (*citing McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971)). "On appeal, review is limited to determining if discretion was erroneously exercised." *Gallion*, 270 Wis. 2d at 549. "When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion." *Id.* "[A] court [possesses] the inherent authority to modify a sentence . . . if the sentence is 'unduly harsh or unconscienable.'" *State v. Croshiere*, 273 Wis. 2d 57, 681 N.W.2d 524 (2004).

"The sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant." *McCleary*, 49 Wis. 2d at 276. The sentence to be imposed should represent the minimal amount of custody consistent with those factors. *State v. Setagord*, 211 Wis. 2d 397, 565 N.W.2d 50 (1997). "The responsibility of the sentencing court is to acquire full knowledge of the character and behavior patterns of the convicted defendant before imposing sentence." *Elias v. State*, 93 Wis. 2d 278, 285, 286 N.W.2d

559 (1980).

The trial court erroneously exercised its discretion when it failed to consider the necessary sentencing factors before imposing a sentence upon Crump. After hearing statements from the State, defense counsel, and Crump, the trial court briefly reflected on Crump's past convictions and that Crump was a viable candidate for probation. The trial court did not reflect on Crump's character, the offense, or the protection of the public as *McCleary* mandates.

Given that your last two convictions are somewhat remote and you did time served on those and a small amount of time, I think you are a candidate for probation, and the Court would find that you do have probationary needs, rather significant ones, I think. Going to impose and stay a sentence of, place you on probation. Stayed sentence of 9 months.

(25:16)

The trial court likely gleaned some information from the parties' statements, but when it came time for the trial court to impose its sentence, the record is devoid of any explanation for the trial court's discretion in handing out the sentence. Crump was given a very meager explanation for the sentence imposed in this case. The trial court erroneously exercised its discretion when it imposed its sentence on an insufficient basis, and for that reason this Court should order that Crump be resentenced.

CONCLUSION

For the reasons stated above, Crump respectfully requests that this Court order a resentencing hearing due to the trial court's erroneous exercise of its discretion at sentencing.

Dated this ___ day of _____, 2013.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and © for a brief and appendix produced with a proportional serif font.

The length of this brief is 452 words.

Dated this ____ day of _____,
2013.

Signed:

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

Dated this ____ day of _____,
2013.

Signed:

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CERTIFICATION OF APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.12(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this ____ day of _____,
2013.

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