

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

RECEIVED

02-10-2014

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal Case No. 2013AP002163-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

VENCEREMOS CRUMP,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF CONVICTION
AND ORDER DENYING MOTION FOR POST-
CONVICTION RELIEF ENTERED IN MILWAUKEE
COUNTY CIRCUIT COURT, THE HONORABLE
MEL FLANAGAN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

John T. Chisholm
District Attorney
Milwaukee County

Margaret Anne Kunisch
Assistant District Attorney
State Bar No. 1088883
Attorneys for Plaintiff-Respondent

District Attorney's Office
821 West State Street, Room 405
Milwaukee, WI 53233-1485
(414) 278-4646

TABLE OF CONTENTS

	Page
ISSUES PRESENTED	1
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	2
STATEMENT OF THE CASE	2
ARGUMENT	2
THE CIRCUIT COURT PROPERLY EXERCISED ITS SENTENCING DISCRETION	2
A. Standard of Review	2
B. Relevant Law	3
C. The circuit court properly exercised its sentencing discretion	4
CONCLUSION	7

TABLE OF AUTHORITIES

CASES CITED

	Page
<i>McCleary v. State</i> , 49 Wis. 2d 263, 182 N.W.2d 512 (1971).....	2
<i>State v. Bizzle</i> , 222 Wis. 2d 100, 585 N.W.2d 899 (Ct. App. 1998).....	2
<i>State v. Fisher</i> , 2005 WI App 175, 285 Wis. 2d 433, 702 N.W.2d 56	3
<i>State v. Gallion</i> , 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197	2, 3, 4, 6
<i>State v. Harris</i> , 119 Wis. 2d 612, 350 N.W.2d 633 (1984).....	3
<i>State v. Mosley</i> , 201 Wis. 2d 36, 547 N.W.2d 806 (Ct. App. 1996).....	3
<i>State v. Stenzel</i> , 2004 WI App 181, 276 Wis. 2d 224, 688 N.W.2d 20	6

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2013AP002163-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

VENCEREMOS CRUMP,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF CONVICTION
AND ORDER DENYING MOTION FOR POST-
CONVICTION RELIEF ENTERED IN MILWAUKEE
COUNTY CIRCUIT COURT, THE HONORABLE
MEL FLANAGAN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

ISSUES PRESENTED

- I. Should Crump's post-conviction motion have been granted?

Trial court answered: No

- II. Did the trial court properly exercise its discretion in sentencing Crump?

Trial court answered: Yes

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin does not request oral argument or publication. The case can be resolved by applying well-established legal principles to the facts of the case.

STATEMENT OF THE CASE

As respondent, the State exercises its option not to present a full statement of the case. *See* Wis. Stat. § (Rule) 809.19(3)(a)2. Instead, the State will present additional facts, as necessary, in the argument section of its brief.

ARGUMENT

THE CIRCUIT COURT PROPERLY EXERCISED ITS SENTENCING DISCRETION

A. Standard of review.

A circuit court's sentencing decision is reviewed for an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Reviewing courts adhere to “a consistent and strong policy against interference with the discretion of the trial court in passing sentence.” *Id.*, ¶18 (quoting *McCleary v. State*, 49 Wis. 2d 263, 281, 182 N.W.2d 512 (1971)). “Appellate judges should not substitute their preference for a sentence merely because, had they been in the trial judge's position, they would have meted out a different sentence.” *McCleary*, 49 Wis. 2d at 281.

A circuit court commits an erroneous exercise of discretion when its sentencing explanation is unreasonable or unjustifiable. *State v. Bizzle*, 222 Wis. 2d 100, 106, 585 N.W.2d 899 (Ct. App. 1998). The reviewing court is “obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained.” *McCleary*, 49 Wis. 2d at 282. Accordingly, as long as the circuit court sets forth its objectives and explains its reasoning on the record, the trial court exercised proper discretion and did

not commit error. *Id.* at 281. “When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion.” *Gallion*, 270 Wis. 2d 535, ¶17.

B. Relevant law.

In sentencing a defendant, the trial court must enumerate the objectives of its sentence on the record. *Gallion*, 270 Wis. 2d 535, ¶39. The primary factors a sentencing court must consider are the gravity of the offense, the character of the offender, and the protection of the public. *State v. Mosley*, 201 Wis. 2d 36, 43-44, 547 N.W.2d 806 (Ct. App. 1996). In addition to the primary factors, the trial court may consider a number of other factors, including: the defendant’s criminal record; history of undesirable behavior patterns; personality, age, educational background, employment record and social traits; the results of a presentence investigation; the aggravated nature of the crime; the defendant’s degree of culpability; the defendant’s remorse and cooperativeness; the need for close rehabilitative control; and the rights of the public. *State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984). After setting forth the objectives, the court must then identify the facts it considered in arriving at its sentence and explain how those facts advance the objectives of its sentence. *Gallion*, 270 Wis. 2d. 535, ¶¶41, 42.

The circuit court does not have to passionately or eloquently provide a detailed analysis of how each individual factor affected the calculation of Crump’s sentence. *See State v. Fisher*, 2005 WI App 175, ¶¶21-24, 285 Wis. 2d 433, 702 N.W.2d 56 (explaining that *Gallion* does not require a comparative analysis of the affect of any given factor on the length of the sentence). Here, the court fashioned an appropriate sentence based on the primary factors, and relevant facts were identified on the record throughout the sentencing hearing, through the court’s colloquy with Crump, and at the time the court imposed its sentence. This process is precisely what *Gallion* demands. *Id.* ¶42. Crump requests a more elaborate explanation, but *Gallion* itself warns that there is no specific amount of analysis that will fulfill its requirements; rather the circuit court is simply required to provide a rational

and explainable basis for the sentence imposed. *Gallion*, 270 Wis. 2d 535, ¶39.

C. The circuit court properly exercised its sentencing discretion.

At sentencing, the circuit court heard argument from the State, Crump's attorney, and Crump. (R25:3-16). The State made a recommendation of six months incarceration imposed and stayed for a period of eighteen months probation with appropriate domestic violence conditions; Crump's attorney requested twelve months of probation with a batterer's anonymous program. (R25:2, 8).

After hearing argument from the parties, the circuit court exercised proper discretion when it fashioned a reasonable and justifiable sentence. The sentence was imposed after considering the primary factors: the seriousness of the crime, Crump's character, and the need for protecting the public. The circuit court sentenced Crump to nine months incarceration imposed and stayed for a period of eighteen months probation with the following conditions: Batterer's Intervention Program, alcohol and drug evaluation and treatment, absolute sobriety, mental health evaluation, and no contact with the victim. (R25:17-18).

First, the court considered the seriousness of the crime. It noted the aggravated nature of the offense at the sentencing hearing, as well as in its order denying post-conviction relief. (R25:12, R18:2). "You hurt her... You put your arm around her neck and you pulled her back toward the backseat." (R25:12). The court also understood that the crime occurred while the victim was trying to drive a car. (R25:12). Accordingly, the court emphasized that the aggravated aspect of the case was due to the "violent nature of the defendant's acts, the presence of his young child and the dangerous situation he placed himself, the victim, his son and the public in by causing the victim to swerve." (R18:2).

Second, the circuit court considered Crump's character. (R25:4-5, 16). The circuit court considered Crump's pleas as an acceptance of responsibility for his crime, but noted his hesitation to accept responsibility and his method of blame-shifting at sentencing. (R24:9, R25:10-13).

Although the defendant pled guilty to the battery, he made numerous conflicting or challenging statements about the facts in his allocution to the court, which suggested either that he was not taking responsibility for his actions or that there were other issues going on with him that were affecting his ability to understand what he had done.

(R18:2). Moreover, the court mentioned his two prior convictions for possession of tetrahydrocannabinol (THC) for which he was sentenced three days time served on each conviction. (R25:16, 4). In addition, Crump's character was evidenced through the victim impact statement, in which the victim indicated Crump's prior history of domestic violence. (R25:5). Thus, the court was led to believe Crump had probationary needs.

Finally, the circuit court considered the need to protect the public. (R25:18). In considering this factor, the court primarily addressed Crump's rehabilitative needs and the need to protect the victim. (R25:18, 18:3). First, the circuit court addressed Crump's need for rehabilitation, noting that Crump's "statements in court demonstrated a 'real disconnect' between other people's description of his behavior and his own description of his behavior." (R18:3). Likewise, "the court indicated that Crump 'had a little more to deal with than he was willing to admit and that he was in denial about' (R18:3). The court also found that Crump might have rehabilitative needs for drug use based on his prior record. (R25:17-18). Second, the circuit court considered the need to protect the victim from Crump. (R25:18). The court also noted its sentencing decision was

intended to give the defendant an opportunity to address his rehabilitative needs on probation but also to punish him for his extremely dangerous behavior which could have had far more devastating consequences for everyone involved and innocent bystanders.

(R18:3). Thus, the court intended to protect the community by rehabilitating and punishing Crump.

Crump argues that the circuit court did not reflect on Crump's character, the offense, or the protection of the public. (App. Brief, pg. 4). However, Crump's argument fails to acknowledge the circuit court's sentencing decision as a whole. *See State v. Stenzel*, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20 (stating that review of sentencing discretion requires review of the "entire record, including any post-conviction proceedings and . . . the totality of the court's remarks"). The sentencing transcript reveals that the court considered Crump's record involving past substance abuse, his history of domestic violence, and disconnect in his relationships when imposing its sentence. (R25:15-18).

Additionally, Crump looks at isolated statements from the circuit court's reasoning and claims that the circuit court gave a "meager explanation;" thus, erroneously exercised its discretion. (App. Brief, pg. 4). When viewing the sentencing record as a whole, it is easy to conclude that the circuit court found that the totality of circumstances led the court to believe probation was an appropriate sentence.

As a result, Crump has provided no evidence to rebut the presumption that the circuit court's exercise of discretion was reasonable. *See Gallion*, 270 Wis. 2d 535, ¶18. Crump's assertion that the circuit court's record is "devoid of any explanation for the trial court's discretion in handing out the sentence" is unfounded. (App. Brief, pg. Br. 4). The record is clear that the court not only "gleaned some information from the parties' statements," but rather paid attention throughout and interjected with questions throughout the hearing to gain a complete understanding of the three sentencing factors prior to imposing its sentence. As a result, when the record is viewed in its entirety, the circuit court found that Crump was a candidate for probation and the record demonstrates a rational and explainable basis.

CONCLUSION

For the reasons above, this Court should affirm the judgment of conviction and the decision and order denying the motion for post-conviction relief.

Dated this _____ day of February, 2014.

Respectfully submitted,

JOHN T. CHISHOLM
District Attorney
Milwaukee County

Margaret Anne Kunisch
Assistant District Attorney
State Bar No. 1088883

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 1,613.

Date

Margaret Anne Kunisch
Assistant District Attorney
State Bar No. 1088883

**CERTIFICATE OF COMPLIANCE
WITH RULE 809.19 (12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 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.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Date

Margaret Anne Kunisch
Assistant District Attorney
State Bar No. 1088883

P.O. Address:

Milwaukee County District Attorney's Office
821 West State Street- Room 405
Milwaukee, Wisconsin 53233-1485
(414) 278-4646
Attorneys for Plaintiff-Respondent.