

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

RECEIVED

02-28-2014

**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
REPLY BRIEF

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

BY: CHARLES DAVID BETTHAUSER
STATE BAR NO. 1084542
COUNSEL FOR DEFENDANT-APPELLANT

SHERMAN LAW OFFICES
104 MAIN STREET, PO BOX 487
BLACK RIVER FALLS, WI 54615-0487
(715) 284-5381
charles.betthauser@gmail.com

TABLE OF CONTENTS

Table of Contents..	ii
Argument	1
I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO EXPLAIN ITS REASON ON THE RECORD FOR IMPOSING THE SPECIFIC SENTENCE.	1
Conclusion.	7
Certification..	8
Certification of Electronic Filing.	9

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO EXPLAIN ITS REASON ON THE RECORD FOR IMPOSING THE SPECIFIC SENTENCE.

In its brief, the State raised many points regarding the trial court's findings during Sentencing on November 14, 2012. Specifically, that the trial court's findings addressed the necessary sentencing objectives pursuant to *State v. Mosley*, 201 Wis. 2d 36, 43-44, 547 N.W.2d 806 (Ct. App. 1996), and *State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984) (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). The State argues that the trial court addressed the criminal incident when Crump was giving his statement.

THE DEFENDANT: I guess I can - I could go through counseling you know, but like I said, the relationship is over; and if I need counseling just to prepare myself for another long-term relationship, I guess that's fine. Me myself, I mean I don't think I'm going to be in another long-term relationship. And focus in on my school and my life back on track and getting out of Wisconsin. Trying for a new life, new location. Just bury my past and move on.

Because I'm 42 years old; and, you know, it's no reason for me just

to - just have like a personal grudge against someone I spent that much time with. So it's time for me to get on with my life; and, you know, move forward and then eventually -

THE COURT: Did you do anything wrong that day?

THE DEFENDANT: This is the thing. We already agreed.

THE COURT: Did you do anything wrong that day?

THE DEFENDANT: Only thing I feel that I did wrong was in the presence of my son, I raised my voice. That's it.

THE COURT: You choked her.

THE DEFENDANT: I didn't place my hands on her.

THE COURT: You pled to a battery.

THE DEFENDANT: The only reason I pled to something like this, this is something brand new to me; so I just like, okay, if this is what she saying what I was in the car -

THE COURT: I asked you, if you did that and you said, yes.

THE DEFENDANT: Yes. I was in the car.

THE COURT: I asked you if you committed the crime of battery. You told me, yes.

THE DEFENDANT: I - Yes. Yes. Yes, because -

THE COURT: Did you lie to me?

THE DEFENDANT: I'm not saying I lied. I'm saying I was in the car. We yell at each other.

THE COURT: That's not a battery. Yelling is not a battery.

THE DEFENDANT: We yelled and - at each other.

THE COURT: You hurt her.

THE DEFENDANT: No.

THE COURT: Physically, that's a battery.

THE DEFENDANT: Okay. Okay.

THE COURT: We went through this before. But, yes, that's a battery. You put your arm around her neck and you pulled her back toward the backseat. Do you remember that?

THE DEFENDANT: Yes, I remember.

THE COURT: So it did happen.

THE DEFENDANT: Yes. I didn't actually place my hand on her neck. She was trying to drive.

THE COURT: Trying to drive a car.

THE DEFENDANT: She was trying to make a phone call at the same time while driving.

THE COURT: So you grabbed her by the neck for what reason?

THE DEFENDANT: No. When she was making the phone call, I said, give me the phone and I gave the phone to Jaylin (phonetic). Once parked, we could talk about the situation.

THE COURT: When was it that put your hand around her neck?

THE DEFENDANT: I never placed my hand - I touched her on the shoulder; and she's like, get your hands off my neck. Now you saying, you get your hands off me. I'm going to call -

THE COURT: Sir, I think that we're not going to get any further on talking about the facts. You keeping jumping around here; and bottom line is -

(25:10-13). The trial court asked Crump questions regarding his comments at sentencing, but as stated in Crump's Brief-in-Chief, there was little discussion by the trial court before imposing 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.

(25:18).

The State also argues that the trial court adequately discussed Crump's character, which Crump will acknowledge and stipulate. However, Crump maintains that

the trial court failed to address the criminal incident itself and lastly, the need to protect the public.

As stated above, the trial court imposed sentence on p18 of the Sentencing transcript. The trial court then immediately began addressing other necessary issues regarding the sentence, beginning with sentence credit. The State argues in its brief that the trial court, in noting Crump's "disconnect between other people's description of his behavior and his own description of his behavior," that the trial court was addressing protection of the public. The State also included statements from the trial court in its decision to deny Crump's post-conviction motion:

[The trial court's decision] 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.

(18:3) The trial court made these statements after imposing sentence during the Sentencing hearing and also many months in the future in the order denying Crump's post-conviction relief on August 27, 2013. Furthermore, the trial court was only addressing Crump's perspective of the events and Crump's "extremely dangerous behavior" which only indicates the criminal offense to which he pled. (State's Brief, 5; 18:3). Again, there was very little discussion by the trial court prior to imposing sentence. After sentence was imposed, the trial court further discussed the case, furnishing its reasons for

imposing probationary conditions. At this point, the sentence was already imposed and as Crump argues, the trial court had not set forth its rationale on the record, which this Court should agree is an abuse of discretion, and order that Crump be re-sentenced.

CONCLUSION

Venceremos Crump was improperly sentenced due to the trial court's abuse of discretion and failure to explain its reason for imposing sentence prior to imposing said sentence. For those reasons and the reasons stated in this brief, Defendant-Appellant Venceremos Crump respectfully requests that this Court order a re-sentencing.

Dated this 24th day of February, 2014.

Respectfully submitted,

CHARLES DAVID BETTHAUSER
STATE BAR NO. 1084542
COUNSEL FOR DEFENDANT

SHERMAN LAW OFFICES
104 MAIN STREET, PO BOX 487
BLACK RIVER FALLS, WI 54615
charles.betthauser@gmail.com

CERTIFICATION

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

The length of this brief is 1,176 words.

Dated this 24th day of February, 2014.

Signed:

CHARLES DAVID BETTHAUSER
STATE BAR NO. 1084542
COUNSEL FOR DEFENDANT

SHERMAN LAW OFFICES
104 MAIN STREET, PO BOX 487
BLACK RIVER FALLS, WI 54615
charles.betthauser@gmail.com

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 24th day of February, 2014.

Signed:

CHARLES DAVID BETTHAUSER
STATE BAR NO. 1084542
COUNSEL FOR DEFENDANT

SHERMAN LAW OFFICES
104 MAIN STREET, PO BOX 487
BLACK RIVER FALLS, WI 54615
charles.betthauser@gmail.com