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OF WISCONSIN**

STATE OF WISCONSIN

COURT OF APPEALS DISTRICT I

Case No. 2015AP2336-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANNY F. ANTON,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE JOHN SIEFERT PRESIDING

REPLY BRIEF
DEFENDANT-APPELLANT

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ARGUMENT

- I. The Circuit Court did not comply with the requirements of *Gallion* and *McCleary* when it failed to adequately explain its reasons, goals and objectives when sentencing Anton.

The circuit court did not adequately explain its reasoning when it fashioned Anton's sentence. Thus, the court did not comply with the requirements of *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512 (1971) and *State v. Gallion*, 2004 WI 42, 270 Wis.2d 535, 678 N.W.2d 197. Anton is entitled to a resentencing.

In its brief, the State first claims that the circuit court adequately explained its sentence when the court rejected the State's recommendation of a consecutive sentence and instead imposed a \$600 fine as "punishment." (State's Br. 6). Second, the State argues the circuit court's comments at sentencing combined with its written denial of Anton's postconviction motion comport with the requirements of *Gallion* and *McCleary*. (State's Br. 7).

Both of the State's arguments fail.

First, *Gallion* and *McCleary* require the sentencing court to do more than simply state it is rejecting the State's recommendation and imposing a fine as punishment. As the Supreme Court noted in *Gallion*, "merely uttering the facts, invoking sentencing factors, and pronouncing sentence" is not sufficient. *Id.* at ¶2.

The Court in *State v. Fisher*, 2005 WI App 175, ¶23, 285 Wis.2d 433, 702 N.W.2d 56 noted that *Gallion* was decided so that sentencing courts did not merely pay "lip service" to the required sentencing factors and objectives. *Fisher* noted that the "mechanistic application" of the sentencing factors and objections was supposed to stop with *Gallion*.

The circuit court only invoked one objective of the sentence, punishment. The court mentioned no other factors or objectives.

The court did not mention the facts of this particular case at all during sentencing. It did not explain why those particular facts and circumstances affected the sentence. The court did not mention any mitigating factors about the particular case. The court did not mention Anton's demeanor at trial and how that demeanor affected the sentence.

In this case, the court did not even utter the facts. It simply said it thought one year was appropriate and it was punishing Anton by imposing a fine that would affect his current prison sentence.

Second, the State argues that even if the court did not adequately explain its reasoning during the sentencing hearing, the court remedied its error by explaining itself when it denied Anton's postconviction motion. (State's Br. 7). In its decision denying Anton's postconviction motion, the court did indicate that *during* the sentencing hearing it identified the factors considered when sentencing the Anton: his prior record, character for fraud, rehabilitative needs and significant confinement time. (R.23:4)

The State and the court are mistaken. Nowhere in the sentencing transcript does the court mention the rehabilitative needs of Anton. The court does note Anton's prior record and that he is serving a lengthy prison sentence. The question the court did not answer is why those particular factors justify the sentence that was imposed. Anton is not arguing that the court failed to mention his prior record or current prison sentence. Anton is arguing, among other things, that the court did not adequately explain the objective of this particular sentence, how the sentence meets those objectives and why, in light of his prior record and current prison term, the above-mentioned sentence is appropriate.

CONCLUSION

The circuit court's sentence did not comply with the requirements of *Gallion* and *McCleary*. Thus, Anton is entitled to a resentencing.

Dated this 17th day of June, 2016

Signed:

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 582 words.

Dated this 17th day of June, 2016.

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**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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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.

Dated this 17th day of June, 2016.

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