COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1208 **Cir. Ct. No. 1996CF962475**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES LINDALE MOBLEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed*.

Before Curley, P.J., Fine, J., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Charles Lindale Mobley, *pro se*, appeals from an order denying his motion seeking to vacate a sentence. We conclude that the trial court did not commit error as claimed by Mobley and, even if it did, Mobley waived the error when he did not object at the time. Therefore, we affirm.

¶2 In 1996, Mobley pled guilty to two counts of second-degree intentional homicide. In 2003, in response to Mobley's motion to withdraw his plea due to the State's breach of the plea agreement, the trial court ordered that Mobley be resentenced. In its order, the court directed that "all documents pertaining to the original sentencing on October 1, 1996, including the judgment roll, judgment of conviction, sentencing transcript, and the postconviction motion and briefs, be sealed." The court further ordered that "the case be administratively assigned to a different judge for resentencing." The record shows that shortly after that order was entered, the clerk of the circuit court removed the following documents from the court record:

- Pages 6 and 7 containing the sentencing entry of the original court record.
- The original judgment of conviction.
- The original sentencing transcript.
- Mobley's postconviction motions, his briefs, the State's responsive brief and Mobley's reply brief.

¶3 At the resentencing, the State referred the court to a 2003 victim impact statement that had been filed by the mother of one of the victims. The State also told the court it had not been able to contact the family of the other victim. In response, the court noted that the file contained a victim impact statement from the family of the second victim. The State clarified that the one victim impact statement "was as of today" whereas the second family "[had been] in contact with [the State] back in 1996." Mobley did not object when the court referred to the 1996 victim impact statement.

¶4 Restitution was also discussed during the resentencing. The State initially said it did not know whether restitution had been ordered. After Mobley's

attorney indicated that Mobley believed that some money had been paid during his incarceration, the State located in its file a copy of the original judgment of conviction, and informed the court that it "shows no restitution and simply a hundred dollars [sic] fine." Mobley's attorney agreed that Mobley "had [paid] the costs and victim witness fees" and that there was no dispute with regard to restitution. Mobley did not object to the State's reference to the original judgment of conviction. The court stated that it would "adopt the costs and fees, [and] surcharges that were originally ordered in the case." The court further stated that restitution would be set at zero unless the State provided restitution information within sixty days.

¶5 After allocution and further argument from the parties, the court sentenced Mobley to two indeterminate terms of twenty years, to be served consecutively. In its comments, the court noted that "the victims' families pointed out in their statements that no matter how much time [Mobley] get[s], [his] family will always have the opportunity to see [him]" whereas the victims' families did not have the opportunity to see the victims.

¶6 In 2007, Mobley filed a motion to vacate the sentence, arguing that the resentencing court had violated the 2003 order when it reviewed the victim impact statement that had been filed as part of the initial sentencing. The trial court denied the motion. In its order, the court admitted that it had reviewed the 1996 victim impact statement for the victim whose family was not contacted in 2003. The court held that its review of that statement "was appropriate," noting that "the documents to be sealed … were documents pertaining *only* to information about the length and structure of the prior sentences imposed. The victim impact statement was submitted prior to the first sentencing and did not contain this information, nor could it have." (Emphasis in original.)

¶7 On appeal, Mobley renews his argument that the trial court erred when it reviewed the 1996 victim impact statement. In Mobley's view, the 1996 victim impact statement fell within the purview of the court's 2003 seal order. Mobley further complains about the State's examination of the original judgment of conviction to ascertain whether restitution had been ordered, and he contends that the assistant district attorney should have been found in contempt of court for her actions.

¶8 We conclude that the trial court correctly denied Mobley's motion. We agree that consideration of the 1996 victim impact statement during resentencing was proper. The impact of the crime on the victim is a relevant consideration for a court when imposing sentence and, therefore, information contained in a victim impact statement is relevant. *See* ***State v. Naydihor***, 2004 WI 43, ¶27, 270 Wis. 2d 585, 678 N.W.2d 220. The 2003 order was intended to remove from the record information about the original sentence so that the resentencing court would not be affected by the length or terms of that sentence. As the trial court noted in its order denying Mobley's motion, the victim impact statement, by necessity filed before sentence was imposed, contained no information about the sentence that was eventually imposed. Therefore, consideration of the victim impact statement was not precluded by the 2003 order.[1]

¶9 Moreover, Mobley did not raise any objection during the resentencing, either to the State's reference to the judgment of conviction during

[1] We share the State's skepticism regarding whether the 2003 order could "seal" a portion of the court record, in the absence of an authorizing statute or constitutional provision.

the restitution discussion or when the trial court indicated that it had reviewed the 1996 victim impact statement. Thus, error, if any, is waived.[2] *See* ***State v. Damon***, 140 Wis. 2d 297, 300, 409 N.W.2d 444 (Ct. App. 1987).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

[2] In his circuit court motion, Mobley also couched his argument in terms of ineffective assistance of counsel, in apparent recognition that he had waived any objection. On appeal, Mobley does not argue that his attorney at resentencing was ineffective, thereby abandoning that argument. *See* ***State ex rel. Peckham v. Krenke***, 229 Wis. 2d 778, 782 n.3, 601 N.W.2d 287 (Ct. App. 1999) (issues raised in the trial court but not argued in a party's appellate brief are deemed abandoned and will not be considered), *overruled on the grounds by* ***State v. Popenhagen***, 2008 WI 55, ___ Wis. 2d ___, 749 N.W.2d 611.