COURT OF APPEALS
DECISION
DATED AND FILED

September 30, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2334-CR **Cir. Ct. No. 2006CF5112**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALFONZO EMMANUEL WASHINGTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM W. BRASH, III, Judge. *Affirmed*.

Before Fine, Kessler, JJ., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Alfonzo E. Washingon pled guilty to one count of felony murder (armed robbery), party to a crime. *See* WIS. STAT. §§ 940.03,

939.05 (2005-06).[1] The circuit court imposed a bifurcated sentence of forty years, comprised of thirty years of initial confinement and ten years of extended supervision. The circuit court denied Washington's postconviction motion for sentence modification. On appeal, Washington renews the arguments made in his postconviction motion, namely, (1) the circuit court erroneously exercised its sentencing discretion and the sentence was unduly long and excessive; (2) the circuit court erred when it did not explain why it did not adopt the sentencing recommendation made in the presentence investigation report; and (3) the circuit court denied him equal protection by imposing a harsher sentence on him than the sentence meted out to one of his co-actors. Because the record shows that the circuit court properly exercised its sentencing discretion, we affirm.

BACKGROUND

¶2 Kevin Bohannon was walking home from work after working a late shift. He was wearing tennis shoes and listening to an MP-3 player as he walked through a park. Washington, Corey Young, and John Luckett were driving around looking for people to rob. Luckett was the driver. Young noticed Bohannon because of the MP-3 earphones, and Washington and Young approached him. They took Bohannon's shoes and hat, the MP-3 player, and a small amount of money. During the robbery, Young shot and killed Bohannon. Washington and Young then left the scene in the car driven by Luckett. The three men had committed another robbery earlier in the night. As noted, Washington pled guilty to one count of felony murder (armed robbery), party to a crime.

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

DISCUSSION

¶3 Washington first contends that the circuit court erroneously exercised its sentencing discretion by not adequately considering various mitigating factors such as his lack of a prior adult criminal record and the acceptance of responsibility as evidenced by his guilty plea. Washington points to the "favorable character evidence" presented in his sentencing memorandum and contends that the circuit court "did not meaningfully consider … [his] less involved role in the robbery, his cooperation, admission and initiative in turning himself in." Washington complains that the circuit court "emphasized [the] seriousness of the offense and [the] impact on the victim to the exclusion of other worthwhile factors." Washington contends that the circuit court "did not explain how the sentencing objectives were met … and it did not explain how the particular length of prison was needed to meet" the sentencing objectives. Finally, Washington contends that the sentence is "unduly long and excessive." We reject Washington's contentions.

¶4 Three primary sentencing factors should guide a circuit court's sentencing decision—the nature of the offense, the character of the defendant, and society's interest in punishment, deterrence and rehabilitation. *See* ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). Appellate review of sentencing is limited to determining if discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When discretion is exercised on the basis of clearly irrelevant or improper factors, there is an erroneous exercise of discretion." ***Id.*** When the exercise of discretion has been demonstrated, we follow "a consistent and strong policy against interference with the discretion of the trial court in passing sentence." ***Id.***, ¶18 (citation omitted). "Sentencing decisions of the circuit court are generally afforded a strong

presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant." ***Id.*** (citation and brackets omitted). 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." ***Id.***, ¶23 (citation omitted).

¶5 "Circuit courts are required to specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Id.***, ¶40. Also, under truth-in-sentencing, the legislature has mandated that the court shall consider the protection of the public, the gravity of the offense, the rehabilitative needs of the defendant and other aggravating or mitigating factors. ***Id.***, ¶40 n.10.

¶6 The court considered the nature of the offense, describing it as an "appalling, atrocious act" that was "aggravated" because Bohannon was killed. The court considered the relative levels of culpability for the three participants, noting that "by all accounts" the three men discussed and planned to commit a series of robberies. The court stated that all three men were responsible for the crime, stating that "everybody knew what was going to happen, and, … should have known … what could happen any time you take a firearm, stick it in somebody's face, and demand their possessions." The court noted that Washington "was a willing participant" in the robbery who "struck Mr. Bohannon in the head, knocking him to the ground, [where] Young shot him." The court acknowledged that Washington was not the "trigger man" but that his culpability was closer to Young's than Luckett's because "he was there … [and] was one of two primary actors." The court also considered the impact of the crime on the

victim, noting that Bohannon was "a young man who [wa]s doing all of the things that he needed to do to go forward in life."

¶7 The circuit court also discussed Washington's character. The court specifically considered Washington's background, stating that he "didn't have the best childhood" but he had graduated from high school and had been employed. The court further noted that Washington appeared remorseful. The court noted that, of the three co-actors, Washington's criminal record was the least serious, but stated that a defendant's criminal record is "only one component factor that the court looks at."

¶8 As required by ***Gallion***, the court identified its sentencing objectives—protection of the community, punishment, deterrence of others and Washington's rehabilitative needs. *See* ***id.***, ¶40. The court stated that the community's need for protection was "paramount" and that punishment was "right up there." The court further stated that Washington's rehabilitative needs must be addressed by the sentence.

¶9 The record shows that the circuit court identified the various factors that it considered in fashioning its sentence. The circuit court identified its sentencing objectives. Contrary to Washington's appellate argument, the circuit court considered the relevant mitigating factors. While Washington may disagree with the relative weight assigned to the various factors, "[t]he weight to be given each factor is within the discretion of the [circuit] court." ***State v. Wickstrom***, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984). The circuit court did not erroneously exercise its sentencing discretion.

¶10 The potential sentence for the crime to which Washington pled was fifty-five years of imprisonment, comprised of forty-one years and three months of

initial confinement and thirteen years and nine months of extended supervision. *See* WIS. STAT. §§ 940.03(1), 943.32(2), & 973.01(2)(b)3. A sentence is considered harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Given the potential sentence facing Washington and the overall circumstances of the crime, the sentence imposed is neither unusual nor disproportionate.

¶11 Washington next contends that the circuit court did not adequately explain why it rejected the sentencing recommendations made in the presentence investigation report and in the defense sentencing memorandum. The court stated that the two recommendations were "inappropriate," because they "don't … truly address the issues of this particular act." Because "a sentencing court is not required to give any particular level of deference to … sentencing recommendations … included in presentence investigation reports," ***State v. Brown***, 2006 WI 131, ¶24, 298 Wis. 2d 37, 725 N.W.2d 262, the circuit court did not err when it rejected the sentencing recommendations without further explanation.

¶12 Washington also complains that his constitutional right to equal protection was violated because his sentence was more severe than that imposed on Luckett. The court sentenced Luckett to twenty-eight years of imprisonment, comprised of eighteen years of initial confinement and ten years of extended supervision, and Washington argues that the court "should have imposed the same or lesser sentence" on him because he had "no criminal convictions, no drug charges or drug issues and had tried to work." Additionally, Washington points to his high school education, remorse, cooperation and that "[h]e intended only on

committing a robbery and did not know that Corey Young was going to harm or kill the victim."

¶13 Although equal protection "requires substantially the same sentence for substantially the same case histories, it does not preclude different sentences for persons convicted of the same crime based upon their individual culpability and need for rehabilitation." ***Drinkwater v. State***, 73 Wis. 2d 674, 679, 245 N.W.2d 664 (1976). As noted above, the court considered the relative degrees of culpability between the three men, concluding that Young, who fired the gun, was the most culpable and Luckett, who stayed in the car, was the least culpable. The court considered relevant and proper factors when imposing sentence, and any disparity in sentence arises from the court's reasoned consideration. Thus, Washington's argument fails. *See* ***id.*** at 680 (circuit court did not err when "the disparity between the sentences … was the result of the trial judge's consideration of factors pertinent to sentencing procedure").

By the Court.—Judgment and order affirmed.

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