COURT OF APPEALS
DECISION
DATED AND FILED

September 1, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. ***See*** **WIS. STAT. § 808.10 and RULE 809.62.**

Appeal No. 2008AP1686-CR

Cir. Ct. No. 2006CF4249

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RODNEY DEON LAMBERT,

DEFENDANT-APPELLANT.

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

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Rodney Lambert pled guilty to several crimes, including armed robbery, party to a crime. *See* WIS. STAT. §§ 943.32(1)(b) and

(2), 939.05 (2005-06).[1] The sole issue on appeal is whether the trial court erroneously denied Lambert's motion for resentencing in which Lambert contended that he was entitled to resentencing because the sentencing court failed to consider the applicable sentencing guidelines. *See* WIS. STAT. § 973.017(2)(a) (2005-06).[2] The trial court ruled that, even though it did not complete a sentencing guideline form, it considered all of the factors set forth in the guidelines when imposing sentence and, therefore, Lambert was not entitled to resentencing. We affirm.

¶2 For felony offenses, "the court shall consider" applicable guidelines adopted by the sentencing commission or the criminal penalties study committee. WIS. STAT. § 973.017(2)(a). A sentencing court fulfills this obligation "when the record of the sentencing hearing demonstrates that the court actually considered the sentencing guidelines and so stated on the record." ***State v. Grady***, 2007 WI 81, ¶30, 302 Wis. 2d 80, 734 N.W.2d 364. However, ***Grady*** applies only prospectively. *See* ***id.***, ¶45. Thus, for sentencing hearings on or prior to September 1, 2007, "supplementing the record with evidence beyond the sentencing hearing" may establish that the court fulfilled its statutory duty, even if the court did not explicitly state at sentencing that it was considering the guidelines. ***Id.***, ¶3.

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[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] WIS. STAT. § 973.017(2)(a) (2005-06) obligated a sentencing court to consider "the sentencing guidelines adopted by the sentencing commission under s. 973.30." The sentencing commission had adopted sentencing guidelines for the crime of armed robbery.

¶3 Lambert first argues that the trial court erred in denying his motion without a hearing, suggesting that the "supplement[ation] of the record with evidence beyond the sentencing hearing," must be done at a hearing and not by order, as was done in this case. Lambert does nothing more than assert error, and he does not develop this argument. We decline to address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (this court does not consider underdeveloped arguments). Moreover, we see nothing in ***Grady*** that obligates the circuit court to hold an evidentiary hearing.[3]

¶4 We next consider Lambert's primary argument, that is, that the trial court's statement that it considered the factors set forth in the guidelines is not the same as considering the guidelines and is "legally insufficient and improper." Lambert's argument is an exercise in semantics. He does not adequately explain why the guideline differs from the factors set forth in the guidelines. Lambert may be suggesting that the court, by referring to "factors," meant sentencing factors which, while often overlapping, are technically separate from the guidelines. *See, e.g.*, ***State v. Gallion***, 2004 WI 42, ¶43, 270 Wis. 2d 535, 678 N.W.2d 197. If this is Lambert's argument, however, it is not adequately developed, and we do not address it. *See* ***Pettit***, 171 Wis. 2d at 646-47. Further, such an argument is a strained reading of the trial court's order. The trial court acknowledged that

[3] Lambert suggests that this court's orders in a previously-filed no-merit appeal required the trial court to conduct a hearing. Our orders did not impose any such requirement. In an April 4, 2008 order, this court noted that the record showed a potentially meritorious appellate issue under ***State v. Grady***, 2007 WI 81, 302 Wis. 2d 80, 734 N.W.2d 364, and directed Lambert's counsel to discuss with Lambert whether he wanted to pursue a postconviction motion raising a ***Grady*** issue. That order noted that if Lambert filed a postconviction motion, "the trial court would then have an opportunity to make a record on whether it did or did not consider the guidelines." Nothing in that order, or this court's subsequent order dismissing the no-merit appeal, required that the trial court conduct an evidentiary hearing.

although it did not complete the guidelines worksheet,[4] it nevertheless considered the factors as set forth by those guidelines. It is evident the trial court was attempting to express its compliance with its statutory obligation; we do not perceive an alternate interpretation of the court's statement and ***Grady*** does not mandate "magic words."[5] *See* ***Grady***, 302 Wis. 2d 80, ¶34.

By the Court.—Judgment and order affirmed.

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

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[4] Completion of the worksheet is not required to demonstrate consideration of the guidelines. *See* ***Grady***, 302 Wis. 2d 80, ¶38.

[5] Alternatively, we would hold there is harmless error, as Lambert has not attempted to demonstrate the likelihood of a different result following remand. *See* ***State v. Harvey***, 2002 WI 93, ¶46, 254 Wis. 2d 442, 647 N.W.2d 189. We also note that WIS. STAT. § 973.017(2)(a) has been repealed, thereby, removing any obligation on a sentencing court to consider guidelines that had been adopted by the sentencing commission. *See* 2009 Wis. Act 28, § 3386m.