COURT OF APPEALS
DECISION
DATED AND FILED

November 17, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP374-CR **Cir. Ct. No. 2007CF3987**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEVON SANDERS,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Levon Sanders appeals from a judgment of conviction, entered upon his no contest plea, on one count of attempted robbery with the threat of force. Sanders also appeals from the order denying his postconviction motion for resentencing. Sanders asserts the circuit court failed to

appropriately articulate a basis for imposing the maximum sentence. We reject this argument and affirm the judgment and order.

¶2 At approximately 10:00 a.m. on August 13, 2007, eighty-four-year-old Eugene Schulz and his wife, Eleanor, were walking near their home. Schulz heard someone approach behind them. When he turned around, he saw Sanders, who said, "Give me all you got or I'll shoot." Schulz observed Sanders pull out what appeared to be a small black revolver, which Sanders pointed at Schulz's head. Eleanor Schulz screamed for help, and neighbors appeared at their doors. As one resident opened the front door and began to exit the house, Sanders fled.

¶3 At approximately 11:00 a.m. on the same day, seventy-six-year-old Harold Bourne, the caretaker of the Albright United Methodist Church, was working in the church's garage, fixing a lawnmower. He heard a male voice tell him, "Don't move or I'll—." Bourne was unable to hear the rest of the statement. Bourne looked to see who had spoken and observed Sanders pointing a small black revolver at him. Bourne stood up; Sanders again told him not to move. Sanders fled when he saw that Bourne was holding a crescent wrench.

¶4 Sanders was initially charged with two counts of attempted armed robbery with the threat of force, a Class C felony. Pursuant to a plea agreement, Sanders pled no contest to one amended count of attempted robbery with the threat of force, a Class E felony. The other count, also amended to attempted robbery with the threat of force, would be dismissed and read in. Following the plea colloquy, the court accepted the plea, then sentenced Sanders to the maximum term of imprisonment: five years' initial confinement and two and one-half years'

extended supervision. *See* WIS. STAT. §§ 939.32(1g)(b) and 939.50(3)(e) (2007-08).[1] Sanders moved for resentencing, arguing the judge "failed to explain the rationale behind his sentencing decision with sufficient specificity as to allow meaningful appellate review of his decision." The court denied the motion. Sanders appeals.

¶5 The appellate standard of review of a circuit court's sentencing decision is well-established: we limit our review to determining whether the circuit court appropriately exercised its discretion. *See* ***State v. Klubertanz***, 2006 WI App 71, ¶20, 291 Wis. 2d 751, 713 N.W.2d 116. To appropriately exercise its discretion, the circuit court is to consider objectives including, but not limited to, protection of the community, punishment and rehabilitation of the defendant, and deterrence to others. *See* ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. In crafting a sentence to fulfill these objectives, the court is to consider the facts relevant to those objectives, including, but not limited to, the gravity of the offense, the defendant's personal and criminal history, and any aggravating or mitigating factors. *See* ***id.***, ¶¶40 n.10, 43 n.11. The relative weight assigned to each factor and objective is left to the circuit court. *See* ***State v. Stenzel***, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20.

¶6 Sanders asserts the court failed to state "in clear terms, or any terms at all, which of the factors or needs that it cited required a sentence of the length imposed by the court and why." He characterizes the court's sentencing decision as "scarcely more than a laundry list of all the factors that went into its sentencing

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

decision; the disconnect between the factors cited by the court and the length of the sentence subsequently imposed makes meaningful appellate review of the sentencing impossible." We reject Sanders' contention.

¶7 The circuit court's "exercise of discretion does not lend itself to mathematical precision …. We do expect, however, an explanation for the general range of the sentence imposed." ***Gallion***, 270 Wis. 2d 535, ¶49. Here, Sanders appears to argue that the circuit court must explain the weight it gives each factor and explain how the factors translate into a specific sentence length. *See* ***State v. Fisher***, 2005 WI App 175, ¶21, 285 Wis. 2d 433, 702 N.W.2d 56. That is, his argument appears to be "one that augurs for mathematical precision in sentencing, a proposition that ***Gallion*** expressly disavows." *See* ***State v. Ziegler***, 2006 WI App 49, ¶34, 289 Wis. 2d 594, 712 N.W.2d 76. Sanders is not entitled to that degree of specificity. *See* ***Fisher***, 285 Wis. 2d 433, ¶22.

¶8 The circuit court observed and considered multiple factors, unique to this case, that amply justify the maximum sentence. The court characterized attempted robbery, as a Class E felony,[2] as a "fairly midlevel" offense, but noted a variety of aggravating factors present here: there were two incidents, with the second attempted because the first had failed; the effect on the victims was "substantial," as they were "terrified" by the crimes committed in "basically, peaceful neighborhoods'; and the Schulzes had been approached while out on a "daily health walk" and Bourne "was accosted on the grounds of a church … a location for peace." The court stated that Sanders "was preying on vulnerable

[2] The circuit court actually called the crimes Class A felonies. This appears to be a slip of the tongue; Class A felonies are the most serious. Class E is the correct classification, and the circuit court imposed a sentence in line with the correct class.

victims in this matter … taking advantage of their ages." Ultimately, the court concluded that "on the scale of the seriousness of attempted robbery, this is at the top, no question about it."

¶9 The court observed that Sanders had attempted the robberies while on juvenile probation, leading the court to opine that he "blew that off and committed the new offense. That shows he's not very receptive to rehabilitative effort, particularly not outside of confinement …. I think he does have a need for close rehabilitative control."

¶10 The court further determined that the extended period of confinement would provide Sanders time to work on his "education, vocational training, [and] cognitive intervention" and that "a lengthy period of extended supervision [was needed] so that the community can be assured that they will have protection[.]" The court was also of the opinion that "there does have to be incarceration to punish Mr. Sanders, to deter him from being involved in conduct like this, and to deter others …. There needs to be a very clear message sent out."

¶11 The court "analyzed the specific facts relating to the three primary sentencing factors and all the relevant optional factors in a way that explained why these objectives were all appropriate and why a term of imprisonment, as well as lengthy supervision, was necessary to meet the sentencing objectives." ***Klubertanz***, 291 Wis. 2d 751, ¶21. The explanation set forth in the record provides more than an adequate basis for imposing the maximum sentence.

By the Court.—Judgment and order affirmed.

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