COURT OF APPEALS
DECISION
DATED AND FILED

April 27, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1852-CR **Cir. Ct. No. 2007CF4044**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANTRELL M. CURTIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN A. FRANKE and JEFFREY A. CONEN, Judges. *Affirmed.*

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

¶1 PER CURIAM. Dantrell M. Curtis appeals from a judgment of conviction, entered upon his guilty plea, on one count of first-degree reckless

homicide, and from an order denying his motion for resentencing.[1] Curtis asserts the sentencing court erroneously exercised its discretion by failing to consider probation as a first alternative to imprisonment. We conclude that, although it did not explicitly say so, the court determined probation was inappropriate under the standard adopted in ***Bastian v. State***, 54 Wis. 2d 240, 248-49 n.1, 194 N.W.2d 687 (1972). We affirm.

¶2 On July 31, 2007, Curtis and a codefendant killed Romero Stokes during a carjacking outside a sandwich shop. Stokes died from exsanguination following twenty-one gunshot wounds. Curtis, who was sixteen years old at the time, was charged with first-degree intentional homicide, armed robbery with the use of force, and operating a motor vehicle without the owner's consent, all as party to a crime. Curtis eventually pled guilty to one amended count of first-degree reckless homicide, as party to a crime. The armed robbery count was dismissed and read in.[2] The court sentenced Curtis to twenty years' initial confinement and ten years' extended supervision.

¶3 Curtis moved for resentencing. He asserted, in part, that the circuit court "did not indicate why probation is not appropriate[.]" The court reviewed the sentencing transcript, concluded discretion had been properly exercised, and denied Curtis's motion without a hearing. Curtis now appeals, with the sole claim

[1] The Honorable John A. Franke imposed sentence and entered the judgment of conviction. The Honorable Jeffrey A. Conen entered the order denying the postconviction motion.

[2] After Curtis withdrew a motion for a reverse waiver into juvenile court, the State filed an Information that charged only the homicide and robbery counts.

that the circuit court erroneously exercised its sentencing direction when it "overlooked probation as the first alternative."

¶4 It is well-settled that we expect a circuit court to exercise discretion at sentencing. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Discretion "contemplates a process of reasoning … depend[ing] on facts that are of record or that are reasonably denied by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards." ***McCleary v. State***, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). When it is clear that discretion has been exercised, we follow a "'consistent and strong policy against interference'" with the circuit court's sentence, even if we might have imposed a different sentence. ***Gallion***, 270 Wis. 2d 535, ¶18 (quoting ***McCleary***, 49 Wis. 2d at 281).

¶5 Likewise, it is well-established that we expect a sentencing court exercising discretion to consider the objectives of a sentence, the facts of the case relevant to those objectives, and various factors that might influence the sentence. *See* ***id.***, 270 Wis. 2d 535, ¶¶40-43. We further expect "that probation should be considered as the first alternative." ***Id.***, ¶25.

¶6 In ***Bastian***, the supreme court expressly adopted Standard 1.3, from the American Bar Association's *Standards Relating to Probation* (Approved Draft 1970). *See* ***Bastian***, 54 Wis. 2d at 247-48. Standard 1.3 states, in relevant part, that probation should be imposed "unless the sentencing court finds that:"

> "(i) confinement is necessary to protect the public from further criminal activity by the offender; or
>
> "(ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or

> "(iii) it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed.["]

Id. at 248-49 n.1 (citation omitted).

¶7 Here, the sentencing court never expressly made a ruling prefaced with the phrase "probation is inappropriate because …," or some variation thereof. As a general rule, however, we do not require the circuit court to recite any particular "magic words" in the decision-making process. *See* ***Gallion***, 270 Wis. 2d 535, ¶49. Instead, it is clear from the sentencing transcript that the court did not impose probation because it determined confinement is necessary to protect the public. As the sentencing court observed, Curtis needs correctional treatment that is best provided in an institutional setting. Thus, probation would unduly depreciate the seriousness of the offense. In other words, "[w]hile the trial judge did not allude to [the ABA] standard in imposing sentence, his rationale followed that of the standard." ***Bastian***, 54 Wis. 2d at 247. Discretion was properly exercised at sentencing, and the postconviction motion was properly denied.

By the Court.—Judgment and order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).