COURT OF APPEALS
DECISION
DATED AND FILED

July 27, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP1893-CR **Cir. Ct. No. 2007CF2819**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

REMO HARRISON DANIELS,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Remo Harrison Daniels appeals from a judgment of conviction and an order denying his postconviction motion without a hearing. Daniels challenges the circuit court's imposition of sentence. We conclude the

court properly exercised its sentencing discretion and affirm the judgment and order.

¶2 Daniels pled no contest to four counts of kidnapping with the use of force, while armed with a dangerous weapon, and two counts of first-degree sexual assault. Between March and May 2007, Daniels approached each of four victims with a gun, demanding money. Three victims were forced at gunpoint to take Daniels to an automatic teller machine and to withdraw additional cash. Two of the victims were female; Daniels fondled one and raped the other. In exchange for his plea, five additional charges—four armed robberies with the threat of force and one burglary while armed—were dismissed and read in.

¶3 At sentencing, the State recommended a global sentence of fifty years' initial confinement and twenty years' extended supervision. The defense, encouraging the court to consider Daniels' adolescent, nineteen-year-old brain, asked for a sentence of twenty years' initial confinement and twenty years' extended supervision. The presentence investigation report recommended fifty-six to seventy-one years' initial confinement and thirty to thirty-six years' extended supervision. The circuit court ultimately imposed fifty years' initial confinement and thirty years' extended supervision: eight years' initial confinement on each kidnapping count, nine years' initial confinement on each sexual assault count, and five years' extended supervision on all of the counts, each sentence to be served consecutively.

¶4 Following sentencing, Daniels moved for sentence modification, arguing that mitigating factors justified a lower sentence and the circuit court had a special obligation to explain what amounts to a life sentence. The court denied the motion without a hearing. Daniels appeals.

¶5 Daniels' fundamental dispute is with the length of his sentence. Regarding the initial imposition of sentence, he has essentially two prongs to his argument. First, his sentence is effectively a life sentence and was thus inadequately explained, and second, the circuit court improperly exercised its discretion by failing to "incorporate mitigating primary factors," failing to consider treatment options, and failing to "meaningfully explain[]" Daniels' character.

¶6 Sentencing is committed to the circuit court's discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The primary objectives of a sentence include protection of the community, punishment of the defendant, and rehabilitation of the defendant and deterrence. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. A sentencing court should identify the objectives of greatest importance and explain how a particular sentence advances those objectives. ***Id.*** The necessary amount of explanation "'will vary from case to case.'" ***State v. Brown***, 2006 WI 131, ¶39, 298 Wis. 2d 37, 725 N.W.2d 262 (citation omitted).

¶7 In explaining a sentence, the circuit court must identify relevant factors it considered. The three primary factors to be considered are the gravity of the offense, the character of the offender, and the need to protect the public. ***State v. Berggren***, 2009 WI App 82, ¶40, 320 Wis. 2d 209, 769 N.W.2d 110. The weight given to each factor is a discretionary determination. ***Id.*** Subfactors that the court may consider include the defendant's criminal history, the vicious or aggravated nature of the crime, the defendant's remorse, and the rights of the public. ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999). If the record reveals a proper exercise of sentencing discretion, we follow a strong public policy against interference with that discretion. ***Ziegler***, 289 Wis. 2d 594,

¶22; *see also* ***Berggren***, 320 Wis. 2d 209, ¶44 (this court has duty to affirm "'if from the facts of record it is sustainable as a proper discretionary act") (quoting ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971)).

¶8 Daniels suggests that a sentence operating as a life sentence "impos[es] upon the court a special obligation to explain its reasoning." He complains his sentence is unduly harsh because of its cumulative effect, and he complains the circuit court did not explain each separate sentence or the aggregate of the sentences. *See* ***State v. Hall***, 2002 WI App 108, ¶18, 255 Wis. 2d 662, 648 N.W.2d 41 ("The long length of Hall's [304-year] sentence renders it meaningless.").

¶9 The ***Hall*** court did not conclude that a "life" sentence was *per se* unreasonable. *See* ***id.***, ¶1. Hall's sentence was rejected because the circuit court inadequately explained the sentence, not because it was effectively a life sentence. *See* ***id.*** Further, ***Hall*** did not establish a procedural requirement that a sentencing court separately articulate why it imposed consecutive, instead of concurrent, sentences. *See* ***Berggren***, 320 Wis. 2d 209, ¶45. ***Hall*** simply "emphasized the well-settled right of defendants" to have their sentences properly explained on the record. ***Berggren***, 320 Wis. 2d 209, ¶45. Thus, we will review whether Daniels' sentence was properly explained and supported by the record. An "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.

¶10 Here, the circuit court concluded there was "a strong need for punishment, and a need for protection of the community" while acknowledging Daniels had some rehabilitative needs in the form of mental health and sexual

offender treatment. That is, the court considered primary sentencing factors—the gravity of the offense, the offender's character, and the need to protect the public. ***Berggren***, 320 Wis. 2d 209, ¶40.

¶11 In particular, the circuit court noted that Daniels planned each attack, obtaining a gun and lying in wait for victims, then using the proceeds of his robberies to feed his drug habit. The court further noted the devastating impact of Daniels' crimes on his victims, particularly on the women he sexually assaulted. That the court gave greater emphasis to punishment and community protection by focusing on the gravity of the offenses, instead of emphasizing Daniels' character and rehabilitative needs, is not an erroneous exercise of discretion.

¶12 For the same reasons, the circuit court properly denied the postconviction motion. In the motion, Daniels asserted, similar to his appellate argument, that the court failed to consider mitigating factors, his treatment needs, and his character. He also complained about his "life" sentence. The court rejected the motion, noting its sentencing decision reflected a proper exercise of discretion.

¶13 The record reveals that the circuit court did, in fact, consider Daniels' youth, lack of a criminal record, and his mental health needs—all mitigating factors Daniels believes were not properly considered. Again, however, the fact that the circuit court did not weigh these factors in a manner more favorable to Daniels does not mean the court improperly exercised its discretion.

¶14 The record further reveals that the circuit court considered Daniels' treatment needs. Daniels argues that the court failed "to consider community based treatment" as a sentencing objective and as a means for accomplishing

rehabilitative goals. In reality, the court simply concluded that Daniels' treatment, given the seriousness of his offenses, would have to be accomplished in a secure setting. Eschewing "community based" treatment options does not necessarily constitute an erroneous exercise of discretion here, particularly when the court concluded that Daniels presents a risk to the public.

¶15 Daniels also claims the circuit court failed to consider his character, which, in his view, "yielded positive consideration" from his "cooperation, ability to overcome adversity, [and] intellectual deficiencies." He offers no explanation as to how these traits are positive factors—it is not clear, for example, what adversity Daniels has overcome. Further, the record indicates that the court did consider certain aspects of Daniels' character, including Daniels' apparent remorse and the fact that his plea spared the victims from testifying.

¶16 Finally, as noted previously, a "life" sentence is not *per se* unreasonable.[1] *See* ***Hall***, 255 Wis. 2d 662, ¶1. Our jurisprudence imposes no heightened duty of explanation for a "life" sentence.

¶17 Daniels' sentence is well within the statutorily permitted maximums and is not so disproportionate to his offenses as to shock the sentiment of reasonable people. *See* ***Berggren***, 320 Wis. 2d 209, ¶47. Daniels engaged in an intentional crime spree to fuel a drug habit, attacking four victims and committing

[1] We also reject Daniels' contention that he effectively received a maximum sentence. He appears to believe this because his eighty-year sentence is greater than the sixty-year maximum for one of his Class B felonies. *See* WIS. STAT. § 939.50(3)(b). However, Daniels' exposure on the counts to which he pled guilty was 300 years' imprisonment. Further, by this court's calculation, the maximum exposure Daniels faced had he gone to trial on all eleven counts as charged was 490 years' imprisonment. His eighty-year sentence is not a maximum sentence.

"heinous" crimes against them. The circuit court properly exercised its discretion at sentencing and in denying the postconviction motion.

By the Court.—Judgment and order affirmed.

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