COURT OF APPEALS
DECISION
DATED AND FILED

November 9, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP2088-CR **Cir. Ct. No. 2007CF5985**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT E. BEENE,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Robert E. Beene appeals a judgment convicting him of one count of substantial battery and one count of intimidating a witness. He also appeals an order denying his motion for sentence modification. He argues

that the circuit court's sentence was excessive and that the circuit court improperly considered the sentencing guidelines when imposing his sentence. We affirm.

¶2 Beene first argues that the circuit court imposed an unduly harsh sentence on him for intimidating a witness. For this conviction, the court sentenced Beene to seven years and six months of imprisonment, with three years and six months of initial confinement and four years of extended supervision. Beene contends that his sentence on this count was too long because it was not as serious as his other conviction for substantial battery, for which he received a much shorter sentence.

¶3 A sentence is excessive or unduly harsh when it "'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.'" ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). "A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable." ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

¶4 Beene viciously beat his mother's boyfriend during an argument, nearly killing him, and then called his brother, a primary witness against him, from jail threatening his brother in an attempt to dissuade him from testifying about the beating. Despite initially cooperating with the police, Beene's brother refused to appear on two occasions at the preliminary examination, appearing only after a warrant was issued for him. According to the prosecutor's statements at sentencing, the prosecutor was forced to reduce the charge from attempted

first-degree homicide to substantial battery because the witnesses in this case were recalcitrant and uncooperative.

¶5 The record shows that the circuit court was concerned with the significant adverse impact Beene's intimidation of his brother had on the administration of justice because Beene's conduct impacted "the heart and integrity of our system." We note that Beene's intimidation had its intended effect in that, although he did not get all charges dismissed, the charge relating to the vicious physical assault was reduced to substantial battery because his brother's testimony at the preliminary examination—when his brother was finally forced to appear—was less inculpatory than his brother's initial statement to police. The circuit court properly exercised its discretion when it considered the negative impact on the integrity of our judicial system caused by Beene's conduct and imposed a sentence, well below the maximum, that punished him for it. We reject Beene's argument that the circuit court's sentence was unduly harsh or excessive.

¶6 Beene next argues that the circuit court should not have considered the sentencing guidelines when it imposed his sentence because the guidelines did not provide information about the specific crimes at issue here; therefore, the circuit court relied on inaccurate information. The transcript of the circuit court's sentencing comments shows that the circuit court considered the sentencing guidelines only to the extent they provided a useful starting point for analysis. Moreover, a circuit court may refer to guidelines for a different offense that are relevant to the offense for which the sentence is imposed, as long as the court does not consider the guidelines as the sole basis for the sentence. *See* ***State v. Jorgensen***, 2003 WI 105, ¶27, 264 Wis. 2d 157, 667 N.W.2d 318. The circuit court did not rely inappropriately on the guidelines in framing its sentence.

By the Court.—Judgment and order affirmed.

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