COURT OF APPEALS
DECISION
DATED AND FILED

October 14, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2014AP556-CR
2015AP557-CR

Cir. Ct. Nos. 2011CF005824
2012CF002115

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VINCENT EARL DANIELS,

DEFENDANT-APPELLANT.

APPEALS from judgments and orders of the circuit court for Milwaukee County: JEAN A. DiMOTTO and WILLIAM W. BRASH, Judges. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. In these consolidated appeals, Vincent Earl Daniels appeals from two judgments convicting him of identity theft contrary to WIS.

STAT. § 943.201(2)(a) (2011–12), and from orders denying his motion for resentencing.[1] The sole issue on appeal is whether the trial court failed to adequately explain its reasons for the sentence it imposed. We affirm.

BACKGROUND

¶2 Pursuant to a plea bargain, Daniels pled guilty to the two felonies at issue in this appeal, as well as three misdemeanors that are not before us.[2] The State agreed to recommend that Daniels be sentenced to eighteen months of initial confinement and two years of extended supervision for the 2011 identify theft, to run concurrent with another sentence Daniels was serving in Waukesha County. The State further agreed to recommend that Daniels be sentenced to two years of initial confinement and two years of extended supervision for the 2012 identity theft, and to remain silent as to whether that sentence should be consecutive or concurrent.

[1] The criminal complaint in appeal No. 2014AP556–CR (Milwaukee County Circuit Court case No. 2011CF5824) alleged that Daniels used a credit card that belonged to an individual, but the complaint cited WIS. STAT. § 943.203(2)(a), which applies to identity theft from an entity. This error was the subject of a pretrial motion and, at the guilty plea hearing, the State said there had been a "[s]cri[ve]ner's error" and that it was now proceeding under the same statute alleged in Milwaukee County Circuit Court case No. 2012CF2115: WIS. STAT. § 943.201(2)(a). Despite the State's clarification at the plea hearing, the judgment of conviction in case No. 2011CF5824 indicates that Daniels violated § 943.203(2)(a). Upon remittitur, the circuit court shall direct the clerk of circuit court to enter an amended judgment of conviction that references § 943.201(2)(a), rather than § 943.203(2)(a). *See* ***State v. Prihoda***, 2000 WI 123, ¶5, 239 Wis. 2d 244, 247–248, 618 N.W.2d 857, 860 (the circuit court must correct a clerical error in the sentence portion of a written judgment or direct the clerk's office to make the correction).

All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.

[2] The trial court imposed concurrent sentences for the three misdemeanors, which resulted in time-served dispositions.

¶3 At sentencing, Daniels's lawyer recognized that Daniels had more than 435 days of presentence credit and asked the trial court "to impose time served across the board." The trial court followed the State's sentencing recommendations and also elected to make the sentence for the 2012 identity theft consecutive to the 2011 identify theft and the Waukesha County sentence. Because four of the sentences imposed were ordered to run concurrent with the Waukesha County case, the only additional time Daniels will have to serve is two years of initial confinement and two years of extended supervision, for the 2012 identify theft.[3]

¶4 Daniels subsequently filed a motion seeking resentencing on grounds that the trial court had erroneously exercised its discretion by "fail[ing] to connect the required sentencing objectives to the sentence imposed." (Bolding omitted.) The trial judge who heard the motion—but did not sentence Daniels—denied the motion in a written order, stating that the sentencing transcript "shows that the sentencing judge appropriately and fairly considered the relevant sentencing factors in these cases" and acted in accordance with ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.[4]

DISCUSSION

¶5 At issue on appeal is the trial court's explanation for the sentences it imposed. At sentencing, the trial court must consider the principal objectives of

[3] Daniels could have been sentenced to fourteen years and three months of imprisonment.

[4] The Honorable Jean A. DiMotto accepted Daniels's pleas and sentenced him, and the Honorable William W. Brash, III, denied the motion for resentencing.

sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 606, 712 N.W.2d 76, 82, and it must determine which objective or objectives are of greatest importance, ***Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d at 557–558, 678 N.W.2d at 207. In seeking to fulfill the sentencing objectives, the trial court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 851, 720 N.W.2d 695, 699. The weight to be given to each factor is committed to the trial court's discretion. ***Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d at 557–558, 678 N.W.2d at 207.

¶6 Courts must explain the reasons for the particular sentence imposed. ***Id.***, 2004 WI 42, ¶39, 270 Wis. 2d at 556, 678 N.W.2d at 207. "How much explanation is necessary, of course, will vary from case to case." ***Ibid.*** We do not require the trial court to state exactly how the factors it considered translate into a specific number of years of imprisonment. ***State v. Fisher***, 2005 WI App 175, ¶¶21–22, 285 Wis. 2d 433, 447–448, 702 N.W.2d 56, 63. We also do not require the trial court to recite "'magic words'" to justify a sentence. *See* ***Gallion***, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209. Rather, we require an explanation for the general range of the sentence imposed. ***Ibid.***

¶7 The sentencing court is generally afforded a strong presumption of reasonability, and if our review reveals that discretion was properly exercised, we follow "'a consistent and strong policy against interference with the discretion of the trial court in passing sentence.'" ***Id.***, 2004 WI 42, ¶18, 270 Wis. 2d at 549, 678 N.W.2d at 203 (citation omitted).

¶8 With those legal standards in mind, we consider Daniels's argument. Daniels contends:

> While the court did discuss the relevant factors, the court did not explain why the sentence it imposed was the minimum sentence necessary to accomplish the objectives it felt were most important. Punishment was clearly what the court felt was most important, but it is unclear why this amount of time was the minimum amount necessary. The court did not give an explanation for the general range of the sentence imposed, nor did it explain how the particular components of the sentence imposed advance the specified objectives. Thus, although the court mentioned sentencing objectives, it failed to connect the sentencing objectives to the sentence imposed.

Notably, Daniels does not allege that the trial court failed to discuss relevant sentencing factors, considered inappropriate factors, or imposed an excessive sentence. Also, while Daniels refers to his sentences generally, we infer that he is most concerned about his sentence for the 2012 identity theft, because that is the only sentence that was not ordered concurrent to the Waukesha County sentence.

¶9 Having examined the sentencing transcript, we conclude that the trial court's sentence explanation met the requirements of ***Gallion*** and its progeny. The trial court called Daniels's crimes "blatant criminal activity" and recognized as an aggravating factor the fact that Daniels had a "pattern" of breaking into people's cars to steal property and credit cards. The trial court also recognized that Daniels had a "bad record" that included dishonesty and "disrespecting cops." The trial court said that both punishment and deterrence were goals in this case, and it found that "probation is not an option" because "[a]ny rehabilitation must take place within the confinement of incarceration."

¶10 The trial court also discussed the State's recommendation, stating: "I don't find the State's negotiation out of order. In fact, in some ways to me it

seems like a generous offer considering how many of these cases you involved yourself in." Finally, the trial court said it would give Daniels credit for accepting responsibility. When the trial court imposed the consecutive sentence for the 2012 identity theft, it stated:

> [T]he sentence I find appropriate is four years of confinement divided equally. It's consecutive to the Waukesha sentence because it occurred after that crime[,] … the 2011 felony case that I just sentenced him on, and … all the misdemeanor crimes he committed. So the fair thing to me seems to be to make it consecutive.

¶11 The trial court's comments reflect that it was especially concerned about Daniels's prior record and his pattern of recent crimes, and that it believed rehabilitation in a confined setting was necessary. Further, although it was not required to do so, the trial court imposed a sentence consistent with the State's sentence recommendation (which included offering no recommendation as to whether the 2012 identify theft should be consecutive), and it explained why it chose to impose a consecutive sentence for the 2012 identify theft. We are convinced that the trial court gave an adequate explanation for the general range of the sentences imposed. *See* ***Gallion***, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209. Therefore, we affirm.

By the Court.—Judgments and orders affirmed.

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