COURT OF APPEALS
DECISION
DATED AND FILED

November 13, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2592-CR **Cir. Ct. No. 2010CF130**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CORY R. OLIGNEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Oconto County: JAY N. CONLEY, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Cory Oligney appeals a judgment, entered upon his no contest plea, convicting him of exposing genitals to a child contrary to WIS. STAT. § 948.10(1)(a) (2011-12). Oligney argues the circuit court erroneously exercised its sentencing discretion and erred by denying his postconviction motion

to reduce the sentence. We reject Oligney's arguments and affirm the judgment and order.

BACKGROUND

¶2 The State charged Oligney with sexual assault of a child under the age of sixteen—a crime for which the maximum possible sentence is forty years. The complaint alleged that Oligney had sexual intercourse with a thirteen-year-old girl. In exchange for his no contest plea to an amended charge of exposing genitals to a child in this case and an amended charge in Oconto County Circuit Court case No. 2011CF146, the State agreed to dismiss and read in five charges arising from three other pending cases. The parties agreed to jointly recommend three years' probation in the present matter, with both sides free to argue conditions of probation.[1] The court ultimately imposed the maximum sentence of three and one-half years, consisting of one and one-half years' initial confinement followed by two years' extended supervision. The circuit court denied Oligney's postconviction motion for resentencing and this appeal follows.

DISCUSSION

¶3 Oligney contends he is entitled to a sentence reduction because the circuit court relied on an improper factor at sentencing. Sentencing lies within the circuit court's discretion. *See* ***State v. Echols***, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). In reviewing a sentence, this court is limited to determining whether there was an erroneous exercise of discretion. *See* ***id.*** There is a strong public

[1] The record indicates the parties were going to propose a deferred entry of judgment agreement in case No. 2011CF146. That case is not the subject of this appeal.

policy against interfering with the circuit court's sentencing discretion, and sentences are afforded the presumption that the circuit court acted reasonably. *See* ***id.*** at 681-82. Proper sentencing discretion is demonstrated if the record shows that the court "examined the facts and stated its reasons for the sentence imposed, 'using a demonstrated rational process.'" ***State v. Spears***, 147 Wis. 2d 429, 447, 433 N.W.2d 595 (Ct. App. 1988) (citation omitted). "To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record." ***State v. Cooper***, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983).

¶4 The sentence imposed should be the minimum amount of confinement that is consistent with three primary sentencing factors: (1) the gravity of the offense; (2) the character of the defendant; and (3) the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶23, 59-61, 270 Wis. 2d 535, 678 N.W.2d 197. The weight to be given each of the primary factors is within the discretion of the sentencing court and the sentence may be based on any or all of the three primary factors after all relevant factors have been considered. *See* ***State v. Wickstrom***, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984). Although the court should explain the reasons for the particular sentence imposed, "[h]ow much explanation is necessary … will vary from case to case." ***Gallion***, 270 Wis. 2d 535, ¶39.

¶5 Here, Oligney does not claim the sentencing court ignored any of the primary sentencing factors. Instead, he contends the court erroneously exercised its discretion "by basing its sentence upon an offense that [Oligney] was not convicted of"—namely, intercourse with a thirteen-year-old girl. Significantly,

Oligney does not assert that the sentencing court *incorrectly* believed Oligney engaged in sexual intercourse with a thirteen-year-old girl.[2] Rather, he argues that the court could not consider that information when deciding on the sentence. A sentencing court, however, "may consider uncharged and unproven offenses and facts related to offenses for which the defendant has been acquitted." ***State v. Leitner***, 2002 WI 77, ¶45, 253 Wis. 2d 449, 646 N.W.2d 341. Here, the court properly considered the sexual intercourse as it related to the gravity of the offense for which Oligney was ultimately convicted. We therefore reject this challenge to the sentence.

¶6 Oligney alternatively argues the maximum sentence was unduly harsh because he was twenty years old at the time of sentencing, and he had no prior adult criminal convictions. When a defendant argues that a sentence is unduly harsh or excessive, we will hold that the sentencing court erroneously exercised its discretion "only where the sentence 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." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Ultimately, we presume that a sentence within the statutory maximum does not qualify as excessive or unduly harsh. ***Id.***

¶7 Although Oligney portrays himself as a twenty-year-old first offender, a global plea agreement resolved this and four other pending cases. Further, he went from facing a forty-year sentence for the original crime charged,

[2] The record, including the complaint and preliminary hearing testimony, supports the sentencing court's belief that Oligney had intercourse with the victim.

to a maximum three-year sentence under the plea agreement. Because the circuit court considered appropriate factors and imposed a sentence authorized by law, we conclude it properly exercised its sentencing discretion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).