COURT OF APPEALS
DECISION
DATED AND FILED

April 28, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP337-CR **Cir. Ct. No. 2010CF2453**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT-PETITIONER,

V.

MUHAMMAD SARFRAZ,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Muhammad Sarfraz appeals a judgment convicting him of second-degree sexual assault with a dangerous weapon. He also appeals an order denying his motion for postconviction relief. This case was previously before this court, ***State v. Sarfraz***, 2013 WI App 57, 348 Wis. 2d 57,

832 N.W.2d 346, *reversed and cause remanded*, and the supreme court, ***State v. Sarfraz***, 2014 WI 78, 356 Wis. 2d 460, 851 N.W.2d 235. We will not recount the factual background and procedural history, which is discussed in the prior opinions. The issues currently before us are: (1) whether Sarfraz received ineffective assistance of trial counsel; and (2) whether the circuit court misused its sentencing discretion. We affirm.

¶2 Sarfraz contends he received constitutionally ineffective assistance from Michael Verrilli, his trial counsel. To establish ineffective assistance of counsel, a defendant must show that his lawyer's performance was deficient and that he was prejudiced by the deficient performance. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The "test for prejudice in the context of an ineffective assistance of counsel claim is … whether 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" ***State v. Balliette***, 2011 WI 79, ¶24 336 Wis. 2d 358, 805 N.W.2d 334 (citation omitted).

¶3 Sarfraz contends that Attorney Verrilli should have called a witness to testify about Pakistani and Islamic culture and religion, which he and the victim I.N. share, in order to provide a context for the jury when it evaluated I.N.'s testimony. He contends that I.N. had a motive to lie when she testified that she and Sarfraz did not have a consensual sexual relationship because Islamic culture prohibits sexual relations before marriage. Sarfraz argues that if the jury had been given more information about their shared culture, it would have undermined I.N.'s credibility.

¶4 The premise of Sarfraz's argument is flawed because the jury did, in fact, hear testimony at trial about Islamic culture and religious beliefs with regard

to sexual contact between men and women. I.N. testified that she did not have a romantic or sexual relationship with Sarfraz, whom she considered to be like a brother. She explained that she belongs "to a culture where we don't have sexual contact with men before marriage." I.N. also testified that it was very difficult for her to talk about the events that occurred during the assault itself because Sarfraz's violent attack, after which she was found screaming for help, naked from the waist down and bleeding in the hallway of her apartment, made her "practically unacceptable within [her] culture."

¶5 Sarfraz cannot show that he was prejudiced by his lawyer's failure to call a witness to testify about Pakistani and Islamic culture and religion. I.N. testified to the key point that Sarfraz contends gave her a motive to lie—the prohibition on sexual contact outside of marriage. There is not a reasonable probability that the result of the proceeding would have been different if Sarfraz's lawyer had proffered additional evidence on this point. Therefore, we reject the argument that Sarfraz received ineffective assistance of counsel.

¶6 Sarfraz next argues that the circuit court misused its sentencing discretion because it failed to explain why it was imposing a lengthy sentence on him even though he is a first-time offender. He also contends that the sentence was excessively long. The circuit court imposed ten years of initial confinement and five years of extended supervision, a sentence well short of the maximum potential sentence. It considered the three primary goals of sentencing, punishment, deterrence and rehabilitation, and explained its application of the various sentencing considerations in depth in accordance with the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court based its sentence in part on the fact that Sarfraz did not accept responsibility for what he did to I.N. Although the circuit court considered

mitigating factors, like Sarfraz's lack of prior criminal record, the court explained that a ten-year term of confinement was necessary to punish Sarfraz for his despicable acts and his violent conduct. We conclude that the circuit court adequately explained why it imposed the ten-year term of confinement on Sarfraz despite his lack of criminal history, and the sentence was not excessive in light of the facts and circumstances of the assault. *See* ***State v. Glotz***, 122 Wis. 2d 519, 524, 362 N.W.2d 179 (Ct. App. 1984) (To successfully claim that the circuit court's sentence was excessive, a defendant must show "an unreasonable or unjustifiable basis for it in the record."). We reject Sarfraz's argument that the circuit court misused 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. (2013-14).