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November 16, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2015AP531-CR State of Wisconsin v. Coriey M. Evans (L.C. # 2013CF4320)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Coriey M. Evans appeals from a judgment of conviction for second-degree sexual assault of a child and an order denying his postconviction motion to modify his sentence because it is unduly harsh and a new factor exists. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We affirm the judgment and order of the circuit court.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In 2013, Evans sexually assaulted a fifteen-year-old boy in a restaurant bathroom after luring him there with a promise of money and sex with a woman. Evans pleaded guilty and was sentenced to fourteen years of initial confinement and six years of extended supervision. The conviction carries a maximum sentence of forty years' imprisonment. WIS. STAT. § 939.50(3)(c).

Evans argues that the sentencing court erroneously exercised its discretion because the twenty-year sentence he received was too harsh. "[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant." ***State v. Gallion***, 2004 WI 42, ¶18, 270 Wis. 2d 535, 678 N.W.2d 197 (quoted source omitted). "An abuse of this discretion will be found 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). A sentence well within the limits of the maximum sentence is not such a sentence. ***State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

Evans' sentence of twenty years was well within the limits of the maximum sentence of forty years. There is thus no basis for concluding that the sentence is unduly harsh.

Evans also contends that his sentence must be considered unduly harsh because another defendant sentenced in an unrelated child sexual assault case received a lesser sentence. A court is not bound to consider a sentence in a different case:

> By its very nature, the exercise of discretion dictates that different judges will have different opinions as to what should be the proper sentence in a particular case. As a result, a judge imposing a sentence in one case cannot be bound by the determination made by a judge in another case. Indeed, the fact that this court might have reacted differently under the facts and circumstances of a particular case is, itself, insufficient to warrant a determination that the [circuit] court abused its discretion.

Ocanas, 70 Wis. 2d at 187-88 (citation omitted).

Finally, Evans argues that the post traumatic stress disorder that he allegedly suffers from after being robbed and stabbed in 2008 is a "new factor" supporting sentence modification. For purposes of sentencing modification, a new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***State v. Harbor***, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (quoted source omitted). "The defendant has the burden to demonstrate by clear and convincing evidence the existence of a new factor." ***Id.***, ¶36. Whether a new factor exists is a question of law, but whether a sentence should be modified based on a new factor is a discretionary decision for the circuit court. ***Id.***, ¶¶36-37.

The circuit court concluded that there was no evidence that Evans' alleged PTSD "has any bearing on his culpability." Evans' alleged PTSD does not satisfy the test for a new sentencing factor because Evans has not demonstrated that it is relevant to the imposition of sentence. Further, this fact was known to Evans at the time of the PSI and sentencing hearing and was therefore not "unknowingly overlooked."

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals