

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 9, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0716-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL STORZER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: THOMAS H. BARLAND, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Michael Storzer appeals a judgment sentencing him to twenty years in prison for repeated sexual assault of a child in violation of WIS. STAT. § 948.025(1) (1997-98). He also appeals an order denying his motion to modify the sentence based on new factors. He argues that the sentence is

unduly harsh and unconscionable and that placement in a facility other than that recommended by the sentencing court constitutes a new factor justifying sentence modification. We reject those arguments and affirm the judgment and order.

¶2 Storzer was convicted of sexually assaulting his twelve-year-old roommate at the Eau Claire Academy on three successive nights. Storzer was sixteen years old at the time and suffers from the effects of fetal alcohol syndrome. His IQ was measured at seventy-nine and he had the mental abilities of an eleven-year-old. The court sentenced him to twenty years in prison, half the maximum, and requested that he be placed in the Wisconsin Resource Center because his previous acts of prostitution made him vulnerable to attacks from other prisoners.

¶3 After Storzer was placed in a maximum security prison, he filed a motion to modify the sentence based on his ineligibility for the Wisconsin Resource Center and the court's comments at sentencing. The motion also noted that the sentencing court incorrectly described Storzer as a pedophile. The court acknowledged that the record did not support its characterization of Storzer as a pedophile, but denied the motion to modify the sentence. The court noted that the primary rationale for the twenty-year sentence was Storzer's danger to the public which continued to exist regardless of whether he could be correctly described as a pedophile.

¶4 The twenty-year sentence is within the ambit of the trial court's discretion. The court properly considered Storzer's inappropriate sexual conduct with other children and an incident of cruelty to an animal. The court reasonably concluded that a substantial prison term was necessary to protect the public while Storzer received treatment in a structured and confined setting. Storzer's pattern of conduct demonstrated that he was dangerous to young children and represented

a high risk of reoffending if released to the community. The twenty-year sentence is not so excessive as to shock public sentiment. *See State v. Thompson*, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992).

¶5 The trial court correctly concluded that Storzer's ineligibility for placement in the Wisconsin Resource Center does not constitute a new factor justifying a sentence reduction. 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." *See Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). A new factor must be an event or development that frustrates the purpose of the original sentencing. *See State v. Michels*, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989). Storzer's placement in a maximum security prison was not a "new factor" because the trial court recognized at the time of sentencing that it had no authority to control placement of Storzer in a particular institution. The delay in Storzer's eligibility for sex offender treatment did not frustrate the purpose of the original sentence because the primary purpose was to protect the public.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

