

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 2008

David R. Schanker
Clerk of Court of Appeals

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.

Appeal No. 2007AP618-CR

Cir. Ct. No. 2005CF1244

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GEORGE C. WHEELER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BARBARA A. KLUKA, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Snyder, J.

¶1 PER CURIAM. George Wheeler challenges his seven-year sentence for causing a child between thirteen and eighteen to view sexual activity¹ and the circuit court’s denial of his sentence modification motion. We conclude that the circuit court properly exercised its sentencing discretion, and we affirm the judgment of conviction and the order denying sentence modification.

¶2 Wheeler pled no contest to the charge. The State, the presentence investigation report author and Wheeler all urged the circuit court to impose probation. The court declined to do so because Wheeler has a “serious significant prior criminal record” and had committed a crime that was of an “opportunistic and predatory nature,” all of which required prison.

¶3 In sentencing Wheeler, the court deemed the offense serious because it involved a thirteen-year-old victim to whom thirty-two-year-old Wheeler displayed his penis with an invitation to touch it. The court noted the consequences for the victim, including the disruption of her family life and her victimization in her home by Wheeler, who preyed upon the victim in an opportunistic fashion. The presentence investigation report set forth Wheeler’s extensive prior criminal record, including five felonies, and periods on probation and extended supervision which were ultimately revoked. The court commented upon Wheeler’s poor employment history, extensive and repeated periods of incarceration, and history of drug and alcohol use. The court rejected all suggestions of probation because of the seriousness of the offense and Wheeler’s prior criminal history. Therefore, the court imposed a sentence of seven years

¹ WIS. STAT. § 948.055(1) and (2)(b) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

consisting of four years of initial incarceration and three years of extended supervision, to be served consecutively to a case in which Wheeler was serving a sentence after revocation of extended supervision.

¶4 Postconviction, Wheeler moved the circuit court to modify his sentence because the court did not explain the length of the sentence and why he had to serve that sentence consecutively as opposed to concurrently. The court rejected Wheeler’s arguments because the proper factors were considered at sentencing. Wheeler appeals.

¶5 On appeal, Wheeler renews his claim that the circuit court misused its discretion by not elaborating on the reasons for the seven-year consecutive sentence and by not following the probation recommendation of the State and the presentence investigation report author. Wheeler complains that the court did not use the “magic words” of sentencing, defined by Wheeler as “severity of the offense,” “need to protect the public,” and “character of the defendant.” All of Wheeler’s claims lack merit.

¶6 A sentencing court’s discretionary sentencing decision must have a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). Our review is limited to determining whether sentencing discretion was erroneously exercised. *Id.* In reviewing the sentence, we evaluate whether the court specified the objectives of the sentence on the record, which include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence of others. *Id.*, ¶40. The court must also describe the facts relevant to the sentencing objectives and explain, in light of these facts, “why the particular component parts of the sentence imposed advance the specified objectives.” *Id.*, ¶42. Additionally,

the court must “identify the factors that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence the [sentencing] decision.” *Id.*, ¶43.

¶7 Even a cursory reading of the sentencing transcript confirms that the circuit court considered the proper factors and properly exercised its sentencing discretion. The court focused on Wheeler’s character as evidenced by the nature of the crime, employment history, drug and alcohol problems, and prior criminal history. The court deemed the offense severe. The court also clearly stated its reasons for rejecting probation: the nature of Wheeler’s crime and his prior criminal record. Implicit within the court’s rejection of probation and its imposition of a seven-year sentence is a view that the public requires protection from Wheeler. These are all appropriate sentencing considerations. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.

¶8 The exercise of sentencing discretion “does not lend itself to mathematical precision.” *Gallion*, 270 Wis. 2d 535, ¶49. A court must provide an explanation for the general range of the sentence imposed, not for the precise number of years chosen. As with the length of the sentence, whether sentences shall be served consecutively or concurrently is entrusted to the circuit court’s discretion. *State v. Hamm*, 146 Wis. 2d 130, 156, 430 N.W.2d 584 (Ct. App. 1988). “[T]he factors that apply to the length of sentence also apply to whether sentences will run consecutively.” *State v. Anderson*, 163 Wis. 2d 342, 350-51, 471 N.W.2d 279 (Ct. App. 1991), *overruled on other grounds*, *State v. Eugenio*, 219 Wis. 2d 391, 404, 579 N.W.2d 642 (1998). The court’s rationale for placing Wheeler in prison also supports the court’s decision that Wheeler serve the sentence in this case consecutively to another sentence.

¶9 The circuit court properly exercised its sentencing discretion and properly denied Wheeler's motion to modify his sentence.

By the Court.—Judgment and order affirmed.

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

