

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 20, 2010

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. 2009AP1583-CR

Cir. Ct. No. 2008CF1599

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

BRET CORY CORRAO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Bret Cory Corrao appeals from a judgment of conviction, entered upon his guilty plea, for one count of second-degree sexual assault of a child. See WIS. STAT. § 948.02(2). He also appeals from the order denying his motion for sentence modification. The only issue he presents on

appeal is whether the circuit court erroneously exercised its sentencing discretion. We affirm.

BACKGROUND

¶2 Corrao had sexual intercourse with a fourteen-year-old girl and impregnated her. The State charged him with one count of second-degree sexual assault of a child. Pursuant to a plea bargain, Corrao pled guilty as charged, and the State recommended a prison sentence without specifying a recommended length for the term of imprisonment.

¶3 At sentencing, Corrao asked the circuit court to place him on probation. He explained that he wanted to participate in the lives of his children, including the infant born to the victim in this case. The circuit court rejected Corrao's request for probation and imposed a ten-year term of imprisonment, bifurcated as five years of initial confinement and five years of extended supervision. Corrao moved for sentence modification. The circuit court denied the motion, and this appeal followed.

DISCUSSION

¶4 Corrao asserts that the circuit court "failed to explain the rationale behind [the] sentencing decision with sufficient specificity." We disagree.

¶5 Our standard of review is well settled. Sentencing lies within the circuit court's discretion, and appellate review is limited to considering whether discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." *State v. Stenzel*,

2004 WI App 181, ¶7, 276 Wis. 2d 224, 231, 688 N.W.2d 20, 23. We defer to the circuit court’s “great advantage in considering the relevant factors and the demeanor of the defendant.” See *State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631, 640 (1993).

¶6 The circuit court must consider the primary sentencing factors of “the gravity of the offense, the character of the defendant, and the need to protect the public.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 606, 712 N.W.2d 76, 82. The circuit court may also consider additional factors, including:

- (1) [p]ast record of criminal offenses;
- (2) history of undesirable behavior pattern;
- (3) the defendant’s personality, character and social traits;
- (4) result of presentence investigation;
- (5) vicious or aggravated nature of the crime;
- (6) degree of the defendant’s culpability;
- (7) defendant’s demeanor at trial;
- (8) defendant’s age, educational background and employment record;
- (9) defendant’s remorse, repentance and cooperativeness;
- (10) defendant’s need for close rehabilitative control;
- (11) the rights of the public; and
- (12) the length of pretrial detention.

Gallion, 2004 WI 42, ¶43 & n.11, 270 Wis. 2d at 558 & n.11, 678 N.W.2d at 207 & n.11 (citation omitted). The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. *Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d at 237, 688 N.W.2d at 26.

¶7 The circuit court must “specify the objectives of the sentence on the [R]ecord. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. Additionally, the circuit court must explain the “linkage” between the sentencing objectives and the sentence imposed. *Id.*, 2004 WI 42, ¶46, 270

Wis. 2d at 560, 678 N.W.2d at 208. We do not, however, require the circuit court to explain a sentence with mathematical precision. *Id.*, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209. Rather, we expect “an explanation for the general range of the sentence imposed.” *Ibid.*

¶8 Here, the circuit court began its sentencing remarks by discussing the seriousness of Corrao’s sexual assault of a fourteen-year-old girl. The circuit court determined that the offense was aggravated because it resulted in a pregnancy and the birth of a child. In considering Corrao’s character, the circuit court discussed Corrao’s criminal history. See *State v. Fisher*, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 449, 702 N.W.2d 56, 64 (criminal record is evidence of character). The circuit court expressed particular concern that Corrao had a prior conviction for sexually assaulting a child, and the circuit court further noted Corrao’s conviction for a narcotics offense. Additionally, the circuit court took into account that Corrao had fathered three children without assuming responsibility for their support. The circuit court discussed the need to protect the public, emphasizing “that Corrao is having sex with [children] ... taking away their childhood[s], putting them in a situation where they will have difficulties for a good portion of their lives.”

¶9 The circuit court acknowledged several mitigating factors, noting that Corrao had accepted responsibility for his crime and that he had obtained a high school equivalency degree. The circuit court determined, however, that Corrao’s lack of stable employment, his history of substance abuse, and his limited education increased the risk that he would commit additional offenses.

¶10 The circuit court identified rehabilitation and protection of the community as the goals of the sentence. The circuit court found that Corrao had

extensive treatment needs that could not be adequately addressed outside of a prison setting. Further, the circuit court found that confinement in prison was required to protect the public from Corrao's criminal conduct. Accordingly, the circuit court rejected Corrao's request for a term of probation. See *Gallion*, 2004 WI 42, ¶44, 270 Wis. 2d at 560, 678 N.W.2d at 208. Instead, the circuit court imposed a five-year term of initial confinement, followed by five years of extended supervision. The circuit court directed Corrao to participate in any necessary sex offender treatment as a condition of his extended supervision, and the circuit court further directed Corrao to obtain full-time employment or to participate in a "training program such that it will enhance [the] ability to obtain a job."

¶11 Corrao does not dispute that the circuit court referred to numerous relevant factors in its sentencing remarks. He complains, however, that the circuit court did not identify "the factors on which it most relie[d] in determining the appropriate length of sentence." He also complains that the circuit court did not link the length of the sentence imposed to the "relevant facts." Corrao misunderstands the circuit court's obligations at sentencing.

¶12 The circuit court is not required to assign comparative weight to any sentencing factor. *Fisher*, 2005 WI App 175, ¶¶21–22, 285 Wis. 2d at 447–448, 702 N.W.2d at 63. The circuit court also has no obligation to state exactly how the factors it considered translate into a specific number of years of imprisonment. *Ibid.* Rather, the circuit court must discuss the relevant factors and the sentencing objectives in a way that explains "a rational basis for the 'general range' [of the sentence] it imposed." *State v. Klubertanz*, 2006 WI App 71, ¶21, 291 Wis. 2d 751, 766, 713 N.W.2d 116, 123 (citation omitted).

¶13 Here, the circuit court discussed the sentencing factors relevant to Corrao and the crime that he committed. The circuit court chose appropriate sentencing goals in light of those factors. Its sentencing remarks fully explain the range of the sentence imposed in light of the proper considerations. *See id.*, 2006 WI App 71, ¶21, 291 Wis. 2d at 765–766, 713 N.W.2d at 123. The circuit court did all that is required.

¶14 Finally, we reject Corrao’s suggestion that the circuit court imposed a sentence that is excessive or unduly harsh.¹ “A sentence is unduly harsh when it 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.’” *State v. Prineas*, 2009 WI App 28, ¶29, 316 Wis. 2d 414, 436, 766 N.W.2d 206, 217 (citation omitted).

¶15 “A sexual assault of a child is a serious offense.” *State v. Fuerst*, 181 Wis. 2d 903, 916, 512 N.W.2d 243, 247 (Ct. App. 1994). Corrao faced a forty-year term of imprisonment upon conviction. *See* WIS. STAT. § 939.50(3)(c). The ten-year sentence that the circuit court imposed is well within the limits of the maximum sentence and thus is neither disproportionate nor shocking. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411, 417–418 (Ct. App. 1983).

By the Court.—Judgment and order affirmed.

¹ Corrao’s appellate brief contains an assertion in both the statement of the appellate issue and the summary of the argument that the circuit court imposed “an excessive sentence.” Although Corrao does not develop the contention, we choose to address it for the sake of completeness.

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

