

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 17, 2010

A. John Voelker
Acting 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. 2010AP9-CR

Cir. Ct. No. 2009CF11

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM WEBBER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Douglas County:
KENNETH L. KUTZ, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ William Webber appeals a judgment of conviction for two counts of fourth-degree sexual assault and one count of obstructing an officer. He argues the circuit court erroneously exercised its sentencing discretion

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

by considering Webber's position as a law enforcement officer as an aggravating factor instead of a mitigating factor, by considering evidence that he surreptitiously filmed his ex-wife as she exited a shower, and by failing to consider whether a six-month jail sentence was necessary to protect the public. We affirm.

¶2 Testimony at trial established that in September 2008, Webber, then a sheriff's deputy, fondled Nicholas B.'s penis in a sauna at a Superior hotel. Nicholas B., who became good friends with Webber through Webber's son, was shocked by the encounter and asked Webber to take him home. They returned to Nicholas B.'s home. Webber went inside with Nicholas B., grabbed Nicholas B.'s hand, and forced him to feel Webber's penis. During the subsequent investigation, police discovered nude photographs of Nicholas B. on Webber's camera, which Webber claimed he did not take.² Webber was sentenced to six months in jail on the first sexual assault charge and two years' probation on each of the remaining counts, consecutive to the first sentence and concurrent to one another. He was also required to register as a sex offender.

¶3 "It is a well-settled principle of law that a circuit court exercises discretion at sentencing." *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "On appeal, review is limited to determining [whether] that discretion was erroneously exercised." *Id.* Sentencing 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

² At trial, Nicholas B. testified the photographs were taken at the sauna without his consent.

convicted defendant. *Id.*, ¶18 (quotation omitted). “The primary sentencing factors [that] a court must consider are 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, 712 N.W.2d 76.

¶4 At sentencing, the circuit court determined the sexual assaults, though misdemeanors, were serious offenses because of grooming behavior established at trial. The court noted that up until the allegations, Webber was a law enforcement officer who should have been “more aware of this type of behavior and how it comes about than the average man on the street.” Webber, in the court’s view, simply took advantage of a “vulnerable young man.” With respect to the obstruction charge, the court noted Webber ultimately came clean, and it consequently did not view that charge “nearly as seriously” as the sexual assaults.

¶5 The circuit court also spent considerable time discussing Webber’s character. It noted there were “a lot of extremely favorable things” to say about Webber given his thirty-year history as a law enforcement officer. But the court expressed concern that Webber photographed the victim, and noted prior behavior in which Webber videotaped his ex-wife without her consent.

¶6 Finally, the court discussed the need to protect the public. It acknowledged these were Webber’s first criminal charges. However, the court determined Webber posed some risk to the public given his grooming behavior:

Had this been a situation where this had been only the first or second time that you had met the victim and had taken advantage of the situation that presented itself, I would agree wholeheartedly with your attorney that this was just a straight probation case which would not require any jail time at all.

That's not the case I have before me. ... You took advantage of a situation where you had a position of trust with the victim, and ultimately used that trust to engage in the offenses for which you were convicted at trial.

¶7 The claimed errors have no merit. The circuit court considered Webber's law enforcement status both an aggravating and mitigating factor as it related to the seriousness of the offense and Webber's character, respectively. We find no error in the court's ultimate conclusion that Webber seriously abused his position of trust as a friend and officer. The circuit court also properly considered Webber's nonconsensual videotaping of his ex-wife, as it was relevant past conduct that bore on Webber's character. *See State v. Prineas*, 2009 WI App 28, ¶28, 316 Wis. 2d 414, 766 N.W.2d 206 (sentencing courts are obligated to acquire full knowledge of the character and behavior patterns of the defendant). The circuit court provided an adequate explanation for the sentence given, used relevant information regarding the character of the victim, and imposed a sentence that was much less than the maximum available, and therefore presumably neither unduly harsh nor excessive. *See Gallion*, 270 Wis. 2d 535, ¶9.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

