

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 13, 2026

Samuel A. Christensen
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. 2024AP1600-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2021CF464

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDRELL MARQUISE WESLEY,

DEFENDANT-APPELLANT.

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

Before Donald, C.J., Colón, P.J., and Geenen, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Andrell Marquise Wesley appeals from a judgment of conviction and a circuit court order denying his postconviction motion for

sentencing relief. Wesley pleaded guilty to possession of a firearm by a felon and was sentenced to four years' imprisonment consecutive to a federal sentence previously imposed on Wesley for possession with intent to distribute fentanyl and a gun charge.

¶2 Wesley filed a postconviction motion for sentencing relief, arguing that his consecutive sentence was unduly harsh when compared against the concurrent sentence received by a co-actor convicted of the same crime arising out of the same events. The circuit court denied Wesley's motion. We conclude that the circuit court did not erroneously exercise its discretion by imposing Wesley's sentence consecutive to his federal sentence, and it adequately explained its decision to do so.

BACKGROUND

¶3 In the early morning hours of September 2, 2020, police responded to a report of gunshots fired outside a Milwaukee bar. At the scene, police recovered multiple gunshot casings and located evidence of bullet strikes to nearby cars, the door to the bar, several businesses in a strip mall, and a residence. Witnesses reported seeing several people with guns, hearing someone yell "everyone get down," and then hearing approximately twenty-two shots that sounded like two groups were shooting at each other.

¶4 Surveillance videos provided detailed footage of four subjects armed with guns outside the bar in the parking lot, shooting at each other. From the videos, police identified Wesley and another actor, Jovan Newman, as two of the shooters based on their physical features and tattoos. Wesley had prior felony convictions for possession of cocaine as a second or subsequent offense, including one conviction less than two months before this incident. Newman also had a prior

felony conviction approximately six years before the shooting incident for substantial battery.

¶5 Two months after the shooting, Wesley and Newman were arrested on federal criminal charges of possession with intent to distribute fentanyl and a gun-related charge arising out of an unrelated incident.¹ Wesley and Newman separately pleaded guilty in federal court, and they were sentenced in their federal cases before being sentenced in the circuit court for the shooting outside the bar. In the federal case, Wesley was sentenced to 144 months' imprisonment with 4 years of supervised release. Newman was sentenced to 130 months' imprisonment with 4 years of supervised release.

¶6 For their roles in the shooting, the State charged both Wesley and Newman separately with one count each of first-degree recklessly endangering safety using a dangerous weapon as a party to a crime and possession of a firearm by a felon. Wesley's charges included two penalty enhancers: the habitual criminality repeater and the repeat firearm crimes enhancer. WIS. STAT. §§ 939.6195(2), 939.62(1)(b) (2023-24).² Newman's charges did not include any penalty enhancers.

¶7 Both Wesley and Newman pleaded guilty to the felon in possession charge and had the first-degree recklessly endangering safety charge dismissed and read in. The charge to which Wesley pleaded guilty did not include a penalty enhancer. Newman's case was resolved first, and he was sentenced to five years of initial confinement and three years of extended supervision to run concurrent with

¹ The record is unclear whether the gun-related charge was felon in possession of a firearm or possession of a machine gun.

² All references to the Wisconsin Statutes are to the 2023-24 version.

his federal sentence.³ At Wesley’s sentencing, Wesley and the State made “essentially a joint recommendation” for three and a half years of initial confinement to run concurrent with his federal sentence. The circuit court was aware that Newman had received a concurrent sentence.

¶8 In its sentencing decision, the circuit court considered the primary sentencing factors: the gravity of Wesley’s crimes, his character and rehabilitative needs, and the need to protect the public. It acknowledged that the sentence imposed must be “the minimum amount of custody or confinement which is consistent with” these sentencing goals.

¶9 The circuit court’s primary focus was the gravity of Wesley’s crimes. Specifically, it observed that felon in possession of a firearm was “a 10 year felony” that was “aggravated” because the incident was “insane, so violent, and so dangerous.” Wesley’s criminal conduct related to the gun violence was “pretty much as dangerous as it gets,” involving “multiple people just shooting at each other,” with bullets “striking buildings and striking residences[.]”

¶10 In considering Wesley’s character, the circuit court found that Wesley’s criminal history and his “past record is not good, it’s drugs,” including most recently his “federal conviction for possession with intent [to distribute] fentanyl, as well as a felon in possession or some other gun related charge” for which he was serving “12 years in and four out[.]” The circuit court also took into account Wesley’s previous state convictions going back to 2016 involving drug possession, bail jumping, and domestic violence. The circuit court noted that Wesley had taken

³ The Honorable David Feiss sentenced Newman. The Honorable Laura Crivello sentenced Wesley. We refer to Judge Crivello as the circuit court, and we refer to Judge Feiss by name.

responsibility by entering a plea and stating that he was sorry but refused to tell the court anything more about his role in this “terrifying” shooting incident. The circuit court found that Wesley was twenty-eight years old and had his “whole life ahead of” him, that he needed to get his high school diploma or GED, that he had a positive employment history, and that he had taken responsibility and was “somewhat remorseful,” although it was skeptical of Wesley’s sincerity, stating that his apology “seems coached.”

¶11 In considering the need to protect the community, the court found a significant need to protect the community from the type of gun violence involved in Wesley’s crime, that shootings in Milwaukee were “out of control,” and that Wesley was not allowed to possess a gun when the shooting occurred. The court stated that “the community cries out that they can’t have anymore. That too many of our people are being killed.” Additionally, the circuit court found that Wesley’s risk to society was “problematic” given that both the federal case and this case involved guns.

¶12 After considering the relevant factors, the circuit court specifically considered whether to impose Wesley’s sentence concurrent to his twelve-year federal sentence, which was the joint recommendation. However, the court found that a concurrent sentence would result in Wesley not serving “an additional day for being involved in a shooting, which struck buildings, struck residences, clearly endangered so many.” The circuit court described its duty in sentencing Wesley as “to look at how do we hold you accountable? How do we protect society? And how do we rehabilitate you if—if there’s a way to do that.” The court sentenced Wesley to two years of initial confinement followed by two years of extended supervision, consecutive to his federal sentence. It explained that it was imposing a consecutive sentence because Wesley’s crimes involved “the highest level of violence,” making a consecutive sentence appropriate. Due to the seriousness of

the offense, the court did not make Wesley eligible for programming because “the time you serve, you should serve. That’s how dangerous this is to society,” requiring the full confinement time “in order to protect the needs of society.”

¶13 Wesley filed a postconviction motion seeking an order modifying his sentence to run concurrent to his federal sentence. Wesley contended that his consecutive sentence was unduly harsh because it varied significantly from his co-actors’ concurrent sentences even though they were all convicted of similar crimes arising out of the same shooting event.⁴

¶14 The circuit court denied Wesley’s motion. The court observed that, as a result of the shooting incident, Wesley and his co-actor Newman were charged with first-degree recklessly endangering safety and felon in possession of a firearm. Newman and Wesley both pleaded guilty to felon in possession of a firearm. While Newman received a concurrent sentence of five years of initial confinement and three years of extended supervision, Wesley received a consecutive sentence of two years of initial confinement and two years of extended supervision.

¶15 The circuit court rejected Wesley’s claim that his sentence should be modified because it was unduly harsh in light of the “disparity between the sentences of [his] co-defendants” because this disparity was based on Wesley’s “individual culpability and rehabilitative needs,” and Judge Feiss’s decision to

⁴ In his motion, Wesley made comparisons between his consecutive sentence and the concurrent sentences of two of his co-actors in the shooting, Newman and Jamal Armon. He also argued that the co-actors’ sentences were new factors that warranted sentencing modification.

On appeal, Wesley focuses only on Newman’s sentence, not Armon’s, and he does not argue that Newman’s sentence is a new factor. We deem these arguments abandoned. **A.O. Smith Corp. v. Allstate Ins. Cos.**, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (“[A]n issue raised in the [circuit] court, but not raised on appeal, is deemed abandoned.”). Accordingly, we do not discuss anything related to Armon’s sentence nor do we analyze whether Newman’s sentence is a new factor warranting sentencing modification.

impose a concurrent sentence in his co-actors' cases did "not render the consecutive sentence [Wesley] received unduly harsh." The court concluded that it had properly exercised its discretion in finding "that a consecutive sentence was necessary to adequately penalize [Wesley] for engaging in extremely reckless conduct and to achieve the goals of punishment, deterrence, and community protection. Given the exceptional facts and circumstances of this case, the sentence is not unduly harsh."

¶16 Wesley appeals from the judgment of conviction and order denying his postconviction motion for sentence modification.

DISCUSSION

¶17 Wesley challenges the circuit court's exercise of its sentencing discretion. We will uphold a circuit court's sentence unless it reflects an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We review a circuit court's decision to make a sentence concurrent or consecutive for an erroneous exercise of discretion. *State v. Paske*, 163 Wis. 2d 52, 67, 471 N.W.2d 55 (1991). Whether the sentence imposed was unduly harsh and unconscionable is an issue we review for an erroneous exercise of discretion. *State v. Grindemann*, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507.

I. The circuit court did not erroneously exercise its discretion by imposing Wesley's sentence consecutive to his federal sentence, and it adequately explained its decision to do so.

¶18 On appeal, Wesley makes two distinct arguments. First, he argues that his consecutive sentence is unduly harsh as a substantive matter in comparison to the concurrent sentence received by his similarly situated co-actor, Newman. Second, Wesley argues that the circuit court erroneously exercised its discretion by failing to adequately explain the sentencing disparity between his and Newman's

sentences (i.e., why Wesley received a consecutive sentence while Newman received a concurrent sentence).

¶19 The circuit court has “wide discretion” to determine whether to impose a concurrent or consecutive sentence. *State v. Davis*, 2005 WI App 98, ¶27, 281 Wis. 2d 118, 698 N.W.2d 823. The circuit court “may craft an appropriate sentence by recognizing that concurrent sentences may unduly undermine appropriate sentencing goals by giving a defendant a pass for some of his or her crimes.” *State v. Douglas*, 2013 WI App 52, ¶20, 347 Wis. 2d 407, 830 N.W.2d 126. Although circuit courts are sometimes required to specifically explain why a sentence was imposed consecutive rather than concurrent to another sentence—for example, when multiple sentences are imposed at a single sentencing, see *State v. Hall*, 2002 WI App 108, ¶¶2-3, 14, 255 Wis. 2d 662, 648 N.W.2d 41—such an explanation is not required when the sentence imposed is “unrelated to past offenses for which a defendant may still be serving time,” *State v. Matke*, 2005 WI App 4, ¶¶18-19, 278 Wis. 2d 403, 692 N.W.2d 265. See also *State v. Ziegler*, 2006 WI App 49, ¶31 n.6, 289 Wis. 2d 594, 712 N.W.2d 76 (recognizing the distinction between “a *Hall* case” and “a *Matke* case”).⁵ In the latter circumstance, all that is required is that the circuit court considered the proper factors, explained its rationale for the overall sentence, and the sentence is not unreasonable. *Matke*, 278 Wis. 2d 403, ¶19. “[T]he court does not erroneously exercise its discretion simply by failing

⁵ While we recognize the distinction between “instances where multiple sentences were imposed at a single sentencing” and instances “where a sentence was ordered consecutive to a sentence that the defendant was then serving,” *State v. Ziegler*, 2006 WI App 49, ¶31 n.6, 289 Wis. 2d 594, 712 N.W.2d 76, we consider it best practice for a circuit court to always explain why it chose to impose a consecutive sentence as opposed to a concurrent one. Doing so makes it clearer on appeal whether the circuit court actually exercised its discretion or instead acted arbitrarily or improperly.

to separately explain its rationale for each and every facet of the sentence imposed.”
Id.

¶20 When sentencing a defendant, the circuit court should specify the objectives of the sentence on the record and must consider the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant, as well as any applicable mitigating or aggravating factors. WIS. STAT. § 973.017(2); ***Gallion***, 270 Wis. 2d 535, ¶40. In doing so, the circuit court “possesses wide discretion in determining what factors are relevant to its sentencing decision.” ***Gallion***, 270 Wis. 2d 535, ¶68. In the exercise of its discretion, the circuit court determines both which factors are relevant and the weight to be given to each factor, and it need only discuss the factors it believes are relevant. ***State v. Stenzel***, 2004 WI App 181, ¶¶9, 16, 276 Wis. 2d 224, 688 N.W.2d 20.

¶21 As a general matter, “[i]ndividualized sentencing ... has long been a cornerstone to Wisconsin’s criminal justice jurisprudence.” ***Gallion***, 270 Wis. 2d 535, ¶48. “No two convicted felons stand before the sentencing court on identical footing ... and no two cases will present identical factors.” ***State v. Lechner***, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998) (citation modified). “There is no requirement that defendants convicted of committing similar crimes must receive equal or similar sentences.” ***Id.*** For a sentencing disparity between two co-defendants to be improper, the complaining defendant must show that the “disparity was arbitrary or based upon considerations not pertinent to proper sentencing discretion.” ***Ocanas v. State***, 70 Wis. 2d 179, 187, 233 N.W.2d 457 (1975).

¶22 While disparity in sentences between similarly situated co-defendants may be unduly harsh and violate equal protection if the factors relied upon by the circuit court to impose different sentences are improper or arbitrary, ***id.***, “leniency

in one case does not transform a reasonable punishment in another case into a cruel one,” *State v. Perez*, 170 Wis. 2d 130, 143-44, 487 N.W.2d 630 (Ct. App. 1992). Sentencing disparity between co-actors is “not improper if the individual sentences are based upon individual culpability and the need for rehabilitation.” *State v. Toliver*, 187 Wis. 2d 346, 362, 523 N.W.2d 113 (Ct. App. 1994). As long as the circuit court based its sentence on relevant factors and set forth that basis on the record, parity among co-defendants is not required. *Ocanas*, 70 Wis. 2d at 187; *Toliver*, 187 Wis. 2d at 362. The defendant has the burden to show that the disparity “was arbitrary or based upon considerations not pertinent to proper sentencing.” *Perez*, 170 Wis. 2d at 144.

¶23 We conclude that Wesley failed to show that the disparity between his consecutive four-year sentence and Newman’s concurrent eight-year sentence was arbitrary or based on considerations not pertinent to proper sentencing. Although the circuit court was not required in this case to specifically explain why it imposed a consecutive rather than a concurrent sentence (i.e., this is a *Matke* case, not a *Hall* case), it explained in detail why it was imposing a consecutive sentence and why it believed a concurrent sentence was not adequate to meet its sentencing goals.

¶24 In determining whether to impose a concurrent or consecutive sentence on Wesley, the circuit court emphasized the gravity of Wesley’s crimes, addressed the need to protect the public, and considered Wesley’s culpability and character, including his criminal record. The circuit court’s decision to impose Wesley’s sentence consecutive to his federal sentence was specifically based on the court’s conclusion that a concurrent sentence would result in Wesley not serving “an additional day for being involved in a shooting, which struck buildings, struck residences, [and] clearly endangered so many.” The circuit court also concluded that a consecutive sentence properly held him accountable, was necessary to protect

the community, and was necessary for his rehabilitation. All of the factors that the circuit court considered are considerations that are pertinent to proper sentencing. See **Gallion**, 270 Wis. 2d 535, ¶40. Therefore, the circuit court’s decision to impose Wesley’s sentence consecutive to his federal sentence was fully explained, not arbitrary, and based entirely on considerations pertinent to proper sentencing. See **Ocanas**, 70 Wis. 2d at 187.

¶25 Wesley argues that the circuit court erroneously exercised its discretion by not specifically justifying the disparity between his sentence and Newman’s sentence. He relies on **State v. Giebel** for the principle that the “sentence given to a similarly situated co[-]defendant is relevant to the sentencing decision[.]” **Id.**, 198 Wis. 2d 207, 220-21, 541 N.W.2d 815 (Ct. App. 1995). However, the court in **Giebel** also clarified that a similarly situated co-defendant’s sentence “is not controlling” but merely “*relevant* to the sentencing decision[.]” **Id.** at 221 (emphasis added).

¶26 Here, the circuit court, in the exercise of its discretion, determined that other factors, such as the gravity of the offense and the need to protect the community, were more important than the fact that Newman received a concurrent sentence. It is within the circuit court’s discretion to determine what factors are relevant and the weight to be given to each factor, and the circuit court need only discuss the factors it believes are relevant. **Gallion**, 270 Wis. 2d 535, ¶68; **Stenzel**, 276 Wis. 2d 224, ¶¶9, 16. “[T]he court does not erroneously exercise its discretion simply by failing to separately explain its rationale for each and every facet of the sentence imposed.” **Matke**, 278 Wis. 2d 403, ¶19.

¶27 Wesley also relies on **Hall**, 255 Wis. 2d 662, ¶8, for the proposition that when “sentencing a defendant to consecutive sentences, the [circuit] court must

provide sufficient justification for such sentences[.]” As we explained earlier in this opinion, the rule in *Hall* applies only where multiple sentences are imposed in a single sentencing and not where a sentence is ordered consecutive to a sentence that the defendant is then serving. *Ziegler*, 289 Wis. 2d 594, ¶31 n.6.

¶28 However, setting aside the fact that the circuit court was not required to specifically explain why it imposed a consecutive sentence as opposed to a concurrent sentence, the court in this case provided adequate justification for imposing Wesley’s sentence consecutive to his federal sentence. The circuit court explained that the gravity of Wesley’s crime, the need to protect the public, and Wesley’s rehabilitative needs supported a consecutive sentence to ensure that he served time for what was an incredibly dangerous shooting.

¶29 Wesley also points to federal law for the proposition that “[c]ourts must also consider various other sentencing factors listed in [18 U.S.C.] § 3553(a), including ‘the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.’” *Hughes v. United States*, 584 U.S. 675, 681 (2018) (citation omitted). While there is no analogous Wisconsin statute requiring that courts “avoid unwarranted sentence disparities” between similarly situated defendants, such disparities are “relevant” to a defendant’s sentencing under Wisconsin law, and we agree that significant disparities between truly similarly situated defendants may pose constitutional problems under certain circumstances. *Giebel*, 198 Wis. 2d at 220-21; *see also Ocanas*, 70 Wis. 2d at 187. Here, however, the circuit court was aware that Newman received a concurrent sentence when it sentenced Wesley, but it did not find Newman’s sentence highly relevant. Instead, it placed greater weight on factors such as the gravity of the offense and the need to protect the public.

¶30 Wesley also argues that the circuit court erroneously exercised its discretion because “the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant” was roughly the same for both Newman and Wesley, but the court did not explain why Wesley requires consecutive time to address these sentencing goals. See **Gallion**, 270 Wis. 2d 535, ¶44 (citation omitted). Wesley’s assertion that the circuit court was required to explain in detail why his sentence was consecutive while Newman’s was concurrent is unsupported. After considering the relevant factors, the court specifically concluded that imposing a sentence of two years of initial confinement and two years of extended supervision consecutive to his federal sentence was the minimum amount of custody that was consistent with its sentencing goals. Again, it is within the circuit court’s discretion to determine what factors are relevant and the weight to be given to each factor, and the circuit court need only discuss the factors it believes are relevant to its sentencing decision. **Id.**, ¶68; **Stenzel**, 276 Wis. 2d 224, ¶¶9, 16.

¶31 Finally, Wesley argues that he made a prima facie showing that he and Newman were similarly situated co-defendants and received substantially similar federal sentences. Wesley argues that, having made a prima facie showing, the burden shifted to the State to rebut the proposition that he and Newman are similarly situated, but it failed to do so. According to Wesley, he discharged his burden to show that his consecutive sentence was unduly harsh in comparison to Newman’s concurrent sentence.

¶32 A circuit court has the authority to modify a criminal sentence “when the court determines that the sentence is illegal or void, or when the court determines that the sentence is unduly harsh or unconscionable.” **State v. Harbor**, 2011 WI 28, ¶35 n.8, 333 Wis. 2d 53, 797 N.W.2d 828 (citations omitted). A sentence is unduly

harsh or unconscionable 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.” *Grindemann*, 255 Wis. 2d 632, ¶31 (citation omitted).

¶33 Even assuming that such a burden-shifting framework applied in this context, we question whether Wesley and Newman are, in fact, similarly situated such that a disparity in their sentences raises concern. For example, in the federal case, Wesley was sentenced to 144 months of initial confinement with four years of extended supervision, while Newman was sentenced to 130 months of initial confinement with four years of extended supervision. Additionally, in the federal case, the seriousness of Newman’s criminal history placed him in Criminal History Category III under the federal sentencing guidelines while Wesley’s criminal history placed him in a more serious category, Criminal History Category VI. While we do not have a full record of Newman’s criminal history, the record shows that Wesley’s most recent felony occurred approximately two months prior to the shooting incident giving rise to the charges in this case, while Newman’s most recent felony was a little over six years prior to the shooting incident.

¶34 The differences continue in the case before this court. Wesley’s original charges included two penalty enhancers that were absent from Newman’s charges. Specifically, both of Wesley’s charges included penalty enhancers based on Wesley being a repeat offender. The circuit court also commented that it believed Wesley’s apology appeared “coached,” and we have no information with respect to whether Newman apologized at all or Judge Feiss’s assessment of Newman’s credibility if he did.

¶35 In light of these significant differences, we are not convinced that Wesley and Newman are similar enough to call into question the fairness of Wesley receiving a harsher sentence than Newman for the same crimes arising out of the same events. Wesley failed to demonstrate that his consecutive sentence was unduly harsh or unconscionable.

CONCLUSION

¶36 For the foregoing reasons, we conclude that the circuit court did not erroneously exercise its discretion by ordering that Wesley's sentence run consecutive to his federal sentence even though his co-actor, Newman, received a concurrent sentence.

By the Court.—Judgment and order affirmed.

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

