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DISTRICT II

October 21, 2026

To:

Hon. Estee Elizabeth Scholtz
Circuit Court Judge
Electronic Notice

Michael J. Conway
Electronic Notice

Michele Jacobs
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Jacob Wise
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP1590-CR

State of Wisconsin v. Adam J. Vicory (L.C. #2021CF428)

Before Lazar, P.J., Grogan, and LoCoco, JJ.

Summary disposition orders 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).

Adam J. Vicory appeals from a circuit court judgment of conviction and order denying his postconviction motion for resentencing. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ For the following reasons, we affirm.

Vicory was convicted, following a jury trial, of exposing his genitals to a child (an 8-year-old girl) as a repeat offender. The State charged Vicory as a repeater due to his 2016

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

conviction, which included two counts of exposing his genitals to a child (two 13-year-old girls). While Vicory had received probation for the earlier conviction, the circuit court in this case sentenced Vicory to the maximum authorized by law: 5.5 years of initial confinement and 2 years of extended supervision. This sentence tracked the recommendation of both the State and the author of Vicory’s presentence investigation report.

Vicory filed a postconviction motion for sentence modification, arguing his sentence was unduly harsh and unconscionable. He attached a statistical report suggesting that “no other defendant had been sentenced as harshly ... as Mr. Vicory by this judge or in Walworth County for the same crime.” The postconviction court denied the motion, and Vicory appeals.

We review a circuit court’s sentencing decision, as well as its conclusion that its sentence was not unduly harsh and unconscionable, for an erroneous exercise of discretion. *See, e.g., State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Grindemann*, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. An erroneous exercise of discretion will be found in this context “only where the sentence 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 (quoting *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975)).

Vicory correctly concedes that there “is no requirement that defendants convicted of committing similar crimes must receive equal or similar sentences.” *State v. Lechner*, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998); *see McCleary v. State*, 49 Wis. 2d 263, 271, 182 N.W.2d 512 (1971) (“It is not the philosophy of modern criminal law that the punishment fit the

crime alone and that for every violation of [a] particular statute there be an identical sanction.”). “Imposing such a requirement would ignore the particular mitigating and aggravating factors in each case.” *Lechner*, 217 Wis. 2d at 427. Therefore, the mere fact that Vicory received a harsher sentence than others convicted of the same crime does not mean Vicory’s sentence is unduly harsh or unconscionable. *See also McCleary*, 49 Wis. 2d at 275 (“[T]he legislature intended that maximum sentences were to be reserved for a more aggravated breach of the statutes, and probation or lighter sentences were to be used in cases where the protection of society and the rehabilitation of the criminal did not require a maximum or near maximum sentence.”).

Instead, Vicory appears to argue only that the circuit court failed to link Vicory’s maximum sentence to relevant aggravating factors. We disagree. Most obviously, the court expressed concern over the fact that Vicory had victimized other children in the same way as occurred in this case yet had not learned his lesson from his prior conviction and term of probation. The court also noted Vicory’s disturbing lack of remorse, his attempt to excuse his own conduct, the effect his crime had on the victim, and the need to deter crimes against children. It concluded a long term of confinement was appropriate to ensure the protection of the victim and the public as well as Vicory’s own rehabilitation. Vicory’s statistics do not account for any of these considerations—in particular, his unusual dangerousness—which were largely individualized and provide ample reason for his comparatively lengthy sentence. In sum, we

agree with the State that the circuit court's imposition of a maximum sentence under these circumstances was not unduly harsh or unconscionable.²

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.
See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

² Vicory argues that portions of the circuit court's discussion of aggravating factors related solely to its choice of prison over probation. Vicory's request that we read the transcript in the narrowest possible way is inconsistent with our obligation to "search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained." See *McCleary v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971). In any event, we disagree with Vicory's interpretation of the circuit court's sentencing decision. Notably, the court *began* its assessment of relevant sentencing factors by acknowledging "that the sentence called for in each case must be the minimum amount of custody, not the maximum amount of custody, consistent with [sentencing] goals" and explaining that its consideration of those factors would guide its determination.

