COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 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. 2025AP1176-CR **Cir. Ct. No. 2015CF251**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM J. BONNEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County: JOSEPH G. SCIASCIA, Judge. *Reversed and cause remanded with directions*.

Before Graham, P.J., Kloppenburg, and Nashold, JJ.

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. William J. Bonney appeals an order of the circuit court denying Bonney's postconviction motion for resentencing and leaving intact the original sentence for Bonney's conviction on a charge of first-degree sexual assault causing pregnancy. Bonney argues that the court erroneously failed to resentence him based on all available information, including a new psychological evaluation, after the parties stipulated to a new sentencing hearing. We conclude that the record shows that the court did, in fact, resentence Bonney at a resentencing hearing, and that the court properly exercised its discretion in determining that a sentence of the same length as the original sentence was still appropriate. However, as the State concedes, the court erred by not vacating the original sentence before the resentencing hearing and by issuing an order "denying" sentence modification, allowing the original sentence to remain in effect. Accordingly, we reverse the order denying the postconviction motion for resentencing and remand with directions for the circuit court to vacate the original sentence, grant Bonney's motion for resentencing, and issue an amended judgment of conviction imposing a new sentence of the same length as the original.

BACKGROUND

¶2 Bonney pled no contest to a charge of first-degree sexual assault after he was accused of having intercourse with and impregnating his adult daughter. A charge of incest was dismissed and read in for purposes of sentencing. Bonney admitted that he began sexually abusing the victim when she was 14 years old; she was impregnated at age 21; and Bonney's crime was revealed by paternity testing after the victim gave birth.

¶3 At Bonney's original sentencing hearing in 2016, the State recommended a sentence of 25 years of initial confinement and 20 years of extended

supervision based primarily on the severity of the offense. Defense counsel argued that there were mitigating factors, including Bonney's apparent limited intellectual functioning, which had prompted counsel to request a psychological evaluation of Bonney from Dr. Jerry Roherty. The defense requested seven to ten years of initial confinement and a longer period of extended supervision.

¶4 In its sentencing remarks, the circuit court noted Roherty's diagnoses that Bonney had antisocial personality disorder and borderline personality disorder with dependent and schizoid personality traits. The court commented that "antisocial personality disorder is not something that is likely to be remedied by anything [the court] can do." The court then addressed the required sentencing factors, focusing especially on the gravity of Bonney's offense, and counted as aggravating circumstances the length of time over which Bonney abused the victim and the long-lasting effects the crime had on the victim and her child. The court concluded that these factors outweighed any mitigating factors, including those pointed out by the defense and included in Roherty's evaluation, and sentenced Bonney to 20 years of initial confinement and 10 years of extended supervision.

¶5 In September 2024, Bonney filed a motion seeking either sentence modification or resentencing based on a new psychological evaluation prepared by Dr. LaToya Williams. Williams disputed Roherty's diagnoses of antisocial personality disorder and borderline personality disorder and concluded that Bonney instead had borderline intellectual functioning and major depressive disorder. At a January 2025 hearing, the State agreed to a new sentencing hearing at which the circuit court could consider all available information, including Williams's report. The State communicated its intent to argue that this new information "doesn't really matter ultimately," because the sentence "shouldn't be that different."

¶6 The circuit court held another sentencing proceeding in April 2025. After some initial confusion about which party should make its sentencing argument first, the State noted that it had agreed to a resentencing, "foregoing the new factor analysis." With the court clarifying that "this [was] a new sentencing," as opposed to a sentence modification, the court deemed it appropriate for the State to go first. As at the original sentencing, the State emphasized the gravity of Bonney's offense and argued that "anything less than the original sentence of 20 years initial confinement and then the 10 years of extended supervision would depreciate the seriousness of the offense" and "be a disservice to the victim."

¶7 Williams testified next. She explained that her diagnosis of major depressive disorder differed significantly from Roherty's diagnosis of personality disorders in that major depressive disorder is a "typical everyday clinical disorder that leads to pervasive sadness" rather than something found in people who display "chronic criminal behavior" and who are "prone to lying, manipulation, [and lack of] remorse." In Williams's opinion, Roherty's diagnosis of personality disorders was not likely to be accurate due to the suspect methodologies that he used; she testified that it was "not likely that [Bonney] had antisocial personality disorder[] and borderline personality disorder in 2015 and that [those disorders would] not still show up on a test in 2025." Williams also testified that Bonney had a low risk for reoffending.

¶8 Bonney's counsel highlighted that Bonney was not someone with antisocial personality disorder or borderline personality disorder, but instead "someone that does appreciate and recognize the wrongness of his actions [and] how [they] impacted his victim." Based on that and other factors, including Bonney's low risk of reoffending and age, counsel argued that "something closer to 11 or 12 years" would be an appropriate term of initial confinement. In response to

questioning from the circuit court about the relevance of Bonney's postsentence progress and rehabilitation, counsel stated that under caselaw from the United States Supreme Court, postsentencing conduct is relevant at a resentencing and may be considered by the court.

¶9 The circuit court remarked on having "a specific recollection" of Bonney's original sentencing. The court "fully accept[ed]" Williams's testimony that Bonney's original antisocial personality disorder diagnosis "was not valid" and that his "reoffense risk is not high." However, the court stated that "it really doesn't impact the seriousness of the offense," and the court ultimately concluded that the original sentence was warranted due to "the nature of the offense and the impact on the victim"; it "therefore [had] to deny the motion." The court stated that 20 years of initial confinement followed by 10 years of extended supervision "was, and still is, the minimum amount of incarceration that would do justice to the seriousness of the offense and the need to protect the public." Bonney appeals.

DISCUSSION

¶10 We review sentences for an erroneous exercise of discretion. ***State v. Bolstad***, 2021 WI App 81, ¶11, 399 Wis. 2d 815, 967 N.W.2d 164. "The circuit court properly exercises its discretion when it applies the correct legal standard to the relevant facts of record and reaches a reasonable result using a rational process." ***State v. Medina***, 2006 WI App 76, ¶24, 292 Wis. 2d 453, 713 N.W.2d 172.

¶11 Bonney argues that rather than sentencing him anew in 2025 based on all available information, the circuit court erred by leaving the 2016 sentence in place and merely determining whether it should deviate from that original sentence. Bonney correctly observes that a resentencing court must "start[] over," because "'[w]hen a resentencing is required for any reason, the initial sentence is a nullity;

it ceases to exist.'" ***State v. Wood***, 2007 WI App 190, ¶6, 305 Wis. 2d 133, 738 N.W.2d 81 (quoting ***State v. Carter***, 208 Wis. 2d 142, 154, 560 N.W.2d 256 (1997), *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828). The sentence should "specify the objectives of the sentence on the record," which may "include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. The resentencing court may also "consider a defendant's conduct after the imposition of the invalid sentence." ***Wood***, 305 Wis. 2d 133, ¶6 (citing ***Carter***, 208 Wis. 2d at 146).

¶12 The State argues that Bonney was, in fact, resentenced in 2025 and that he has not shown an erroneous exercise of the circuit court's discretion in imposing a sentence of the same length as the original.[1] Reading the sentencing transcript as a whole, we agree that the court applied the correct framework, appropriately considered the ***Gallion*** factors, and approached the resentencing as a new sentencing, albeit ultimately determining that a sentence of the same length should be imposed.

¶13 The circuit court acknowledged that Roherty's diagnosis "was not valid" and said that it "fully accept[ed]" Williams's testimony, agreeing that Bonney did not have antisocial personality disorder. The court then stated that consideration of the corrected diagnosis may not make "much difference" before addressing the main sentencing factors and objectives. The court articulated the requirements that a sentence sufficiently "protect the public" and account for Bonney's "character and

[1] The State also argues that Bonney forfeited his claim by not raising it in the circuit court. We need not decide this question, as we have the authority to address an allegedly forfeited claim on the merits, as we do here. *See* ***State v. Erickson***, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999).

rehabilitative needs." It also noted that Bonney "has done well with the resources available to him," which was information appropriately considered at resentencing that "wasn't available to [the court] at the time of [original] sentencing." *See* ***Wood***, 305 Wis. 2d 133, ¶6 (stating that postsentencing conduct may be considered at resentencing). As it did at the original sentencing hearing, however, the court emphasized "the nature of [Bonney's] offense and the impact on the victim." While a resentencing court "is not required to defer to the original sentencing objectives," ***id.***, nothing prohibits it from doing so.

¶14 Although the resentencing court here used some language that could suggest, out of context, that it was determining whether sentence modification was warranted due to the existence of a new factor or because the original sentence was excessive, it is clear from the entirety of the transcript that the court conducted an actual resentencing. After taking evidence and hearing argument from both sides, the court concluded that appropriately considered factors, including the seriousness of the offense and its effect on the victim, required a sentence of 20 years of initial confinement followed by 10 years of extended supervision. Bonney has not demonstrated that this decision constituted an erroneous exercise of discretion.

¶15 However, as noted above and as the State concedes, the circuit court did commit two errors requiring correction. First, pursuant to ***Wood***, 305 Wis. 2d 133, ¶6, the original sentence should have been vacated before resentencing occurred. Second, rather than purporting to deny Bonney's motion for sentencing modification, the court should have stated that it granted his motion for resentencing and issued an amended judgment of conviction after conducting the resentencing hearing described above.

CONCLUSION

¶16 For the reasons stated, the order denying the postconviction motion for resentencing is reversed, and the cause is remanded with directions to vacate the original judgment of conviction, grant the postconviction motion for resentencing, and issue an amended judgment of conviction imposing the same sentence as the original sentence.

By the Court.—Order reversed and cause remanded with directions.

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