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DISTRICT II

November 18, 2026

To:

Hon. Tricia L. Walker
Circuit Court Judge
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

John D. Flynn
Electronic Notice

Basil M. Loeb
Electronic Notice

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

2025AP2266-CR State of Wisconsin v. Nicholas A. Martina (L.C. #2023CF695)

Before Lazar, P.J., Gundrum, 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).

Nicholas A. Martina appeals from judgments of conviction entered on his guilty pleas for two felony and two misdemeanor counts of criminal damage to property. He contends the circuit court erred in denying his request for expungement eligibility. 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 disagree with Martina and affirm.

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

BACKGROUND

The State charged Martina with three felony and four misdemeanor counts stemming from criminal damage to property. These offenses occurred over nearly a year and are based on Martina targeting former roommates with whom he was angry. As part of a plea agreement, Martina pled guilty to two felony and two misdemeanor counts, with the remaining counts being dismissed but read in. During sentencing, Martina asked the circuit court "to consider expungement if he [paid restitution] in full within the 3 years [of probation] because he was under 25 at the time of the incident and he would benefit from an expungement and it wouldn't harm society." While acknowledging some positive aspects of Martina's character, the court denied the expungement-eligibility request.

In its sentencing comments, the circuit court expressed concern about Martina's conduct, stating it was

> threatening, because it was clearly done to send a message. It wasn't just [in] a burst of anger that something got broken, but rather repetitive behavior … calculated behavior done on several occasions [and] intended to disrupt [and] inconvenience [the victims. I]t was definitely intended to send a message that they ought to watch out ….
>
> … It cost them money and really caused disarray to their lives, both financially and emotionally ….

The court indicated that Martina's conduct seemed driven by "anger issues because to me this smacks of somebody who gets angry and is going to make someone else pay for it." The court ordered Martina to pay restitution, and while it ordered probation on the felony counts, it also ordered 45 days jail on each misdemeanor count, determining that "some jail [was] necessary" because this was "not a one-time event," but "repetitive."

In denying Martina's request for expungement, the court stated that

> while there would obviously be a benefit to Mr. Martina, he's under 25, it's the multiple times here that this happened over whatever vendetta was going on, and I can't think that the public would not be harmed as a result. I think that there would be a risk to the public. I think the public should know that if there is an issue here that Mr. Martina solved his problems in such an inappropriate way. I might feel differently if this was a one-off, but it happened over a yearlong period where three different incidents occurred …. I think it does not otherwise account for the severity of the offense, so expunction is denied.

Martina appeals this denial.

DISCUSSION

WISCONSIN STAT. § 973.015(1m)(a) provides that for a defendant who meets the age and crimes-of-conviction statutory requirements, a circuit court "may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition." This determination regarding expungement is at the discretion of the court, and we will not disturb it unless we determine that discretion was erroneously exercised. ***State v. Helmbrecht***, 2017 WI App 5, ¶8, 373 Wis. 2d 203, 891 N.W.2d 412. "A circuit court properly exercises its discretion if it relies on relevant facts in the record and applies a proper legal standard to reach a reasonable decision." ***Id.*** (citation omitted). "[I]n assessing whether to grant expungement, the sentencing court should set forth in the record the facts it considered and the rationale underlying its decision for deciding whether to grant or deny expungement." ***Id.***, ¶12.

Here, the circuit court properly considered whether expungement was appropriate, recognizing that expungement would obviously benefit Martina but determining it would harm society. As required by ***Helmbrecht***, the court "set forth in the record the facts it considered and

the rationale underlying its decision for … deny[ing] expungement," *see* ***id.***, explaining that "the public should know that if there is an issue here that Mr. Martina solved his problems in such an inappropriate way," which included acting on his anger and vendetta against his former roommates in a destructive manner multiple times over the course of a year. This concerned the court in regard to the risk to society more than a "one-off" situation would have, and the court determined the public should be aware of Martina's convictions.

In addition to affirming on the merits, we also note that on appeal, the appellant has the burden to show how the circuit court erred. ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. Here, Martina has failed to meet this burden as his arguments do not demonstrate that the court erroneously exercised its discretion. Specifically, he argues as if we are the circuit court considering whether to grant his request for expungement as an initial matter, and his arguments merely amount to his belief that the court erred because it did not see things his way. This does not carry the day.

Therefore,

IT IS ORDERED that the judgments 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