COURT OF APPEALS
DECISION
DATED AND FILED

April 28, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3597-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DAVID HAECKER,

DEFENDANT-APPELLANT.

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

SCHUDSON, J.[1] David Haecker appeals from the judgment of conviction entered after he pleaded guilty to one count of exposing a child to harmful material. He also appeals from the trial court order denying his postconviction motion for sentence modification. Haecker argues that "the trial

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

court erroneously exercised its sentencing discretion in imposing (and albeit staying) a maximum sentence on this 17-year-old offender who entered a guilty plea to a single count of exposing a child to harmful materials[.]" This court affirms the judgment and order.

The material facts are undisputed. On January 20, 1997, after having broken up with his high school girlfriend, Haecker went to his West Allis high school and displayed Polaroid photographs of her, partially and fully nude, posing in a sexually provocative manner. Two of the photographs were close-ups of the girl's vagina.

On February 20, 1997, Haecker entered his plea and was sentenced to nine months in jail, imposed and stayed, and placed on probation for two years. The trial court also ordered a number of probation conditions, including ten days at the House of Correction, a mental health evaluation, random drug screens, and 150 hours of community service. Haecker promptly filed a postconviction motion challenging his sentence. The trial court denied his motion, concluding that the "maximum sentence was wholly warranted."

On appeal, Haecker challenges his sentence, claiming that it constitutes an erroneous exercise of discretion. He contends that the maximum sentence, albeit stayed, and two years' probation "was simply unduly harsh given the seriousness of this offense … [his] youth, lack of a prior record, and his remorse, repentance, and cooperativeness." This court does not agree.

The principles governing appellate review of a trial court's sentencing discretion are well established. *See* ***State v. Larsen***, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). Appellate review is tempered by a strong policy against interfering with the trial court's sentencing discretion. *See*

id. This court will not reverse a trial court's sentence absent an erroneous exercise of discretion. *See* ***State v. Thompson***, 172 Wis.2d 257, 263, 493 N.W.2d 729, 732 (Ct. App. 1992). In reviewing whether a trial court erroneously exercised sentencing discretion, this court considers: (1) whether the trial court considered the appropriate sentencing factors; and (2) whether the trial court imposed an excessive sentence. *See* ***State v. Glotz***, 122 Wis.2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984).

The primary factors a sentencing court must consider are the gravity of the offense, the character of the offender, and the need to protect the public. *See* ***Larsen***, 141 Wis.2d at 427, 415 N.W.2d at 541. The weight to be given each factor is within the sentencing court's discretion. *See* ***Cunningham v. State***, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977). Additionally, when a defendant argues that his or her sentence is unduly harsh or excessive, this court will find an erroneous exercise of discretion "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." ***Ocanas v. State***, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975).

In imposing sentence, the trial court addressed each of the primary factors. The court commented extensively on the gravity of the offense and the need to protect the community from this harm. Disturbed by the vindictiveness of the crime, the court noted:

> Even though it's a misdemeanor, it's vicious and mean spirited. It shows no respect for your girlfriend…. It shows you're trying to take advantage of somebody that apparently at one time cared for you, and then make a joke at her expense. It shows no respect for her whatsoever. The pictures and the conduct engaged in was improper ….

The court then considered Haecker's character, noting that he was seventeen years old, that he was employed and in school. When the court added that it believed Haecker needed to be evaluated for mental health issues, Haecker apparently reacted, drawing this response from the court:

> Don't look puzzled, Mr. Haecker. This is not appropriate behavior. It shows me somebody that has some serious mental health issues….
>
> … This isn't just a kid thing or something funny, Mr. Haecker. You have to understand that you're 17 years of age. You're an adult under the law, and you have to accept responsibility for your conduct.

The court then sentenced Haecker to nine months in the House of Correction, imposed and stayed, and placed him on two years' probation.

This court concludes that the trial court properly exercised discretion. The trial court considered the required sentencing criteria and fairly evaluated the seriousness of the crime. This court does not accept Haecker's argument that his crime "is certainly at the lower end of the spectrum of the offenses embraced by the statute," particularly in comparison to the displaying of violent and pornographic materials to younger children. While that conduct also is extremely serious, Haecker's crime includes the additionally aggravating and humiliating factor of displaying photos to the victim's fellow students. In light of Haecker's conduct, his circumstances, and the seriousness of his crime, the sentence is neither unduly harsh nor excessive. *See generally* ***McCleary v. State***, 49 Wis.2d 263, 282, 182 N.W.2d 512, 522 (1970).

By the Court.—Judgment and order affirmed.

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