**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 4, 2016**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2014AP784-CR** **Cir. Ct. No. 2008CF2852**

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

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MATTHEW ALLEN LILEK,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment and orders of the circuit court for Milwaukee County: REBECCA F. DALLET and STEPHANIE G. ROTHSTEIN, Judges. *Affirmed*.

Before Curley, P.J., Kessler and Brash, JJ.

¶1 BRASH, J. Matthew Allen Lilek appeals from a judgment of conviction entered pursuant to his no-contest pleas to charges of second-degree sexual assault, with use of force, and to aggravated battery. Lilek also appeals the

order denying his postconviction motion, and the post-remand court's order denying his motion to withdraw his pleas following an evidentiary hearing on remand.

¶2 On appeal, Lilek argues that: (1) he did not enter his pleas voluntarily, knowingly, and intelligently; (2) the trial court erroneously exercised its sentencing discretion; and (3) the trial court should not have ordered subsequent competency examinations after the initial report opined that Lilek was incompetent and was not likely to regain competency. We disagree and affirm.

## BACKGROUND

¶3 On June 5, 2008, the State filed a three-count criminal complaint against Lilek, alleging his involvement in a series of acts on May 31, 2008. These charges encompassed allegations of second-degree sexual assault, with the use or threat of force or violence; aggravated battery—bodily harm by conduct creating substantial risk of great bodily harm; and burglary, with battery to the occupant. *See* WIS. STAT. §§ 940.225(2)(a), 940.19(6), 943.10(1m)(a), and 943.10(2)(d) (2007-08).[1]

¶4 On July 11, 2008, the trial court ordered a competency evaluation of Lilek pursuant to defense counsel's request. The initial report of Kenneth Smail, Ph.D., was inconclusive, with a recommendation that the evaluation should continue on an inpatient basis. Lilek was then transferred to the Mendota Mental Health Institute (Mendota), where Dr. Eric Knudson authored a report pursuant to

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

his evaluation in which he opined that Lilek "lacks substantial mental capacity to understand the proceedings and assist in his defense at the present time." He further indicated that while he anticipated that his condition would improve with treatment, it was difficult for him to state, "with reasonable medical certainty that [Lilek] is likely to be restored to competency with treatment."

¶5 On August 20, 2008, the trial court noted that Dr. Knudson "was not satisfied with making a recommendation because of the lack of information from the treating physician for Mr. Lilek." Subsequently, after reviewing Lilek's medical records as provided by Milwaukee County Behavioral Health Division and Aurora Behavioral Health, and after speaking to Dr. Lance Longo, Lilek's treating psychiatrist, Dr. Knudson revised and updated his report, and opined that Lilek was not likely to be restored to competency even if he received treatment at one of the State Mental Health facilities. The State then requested a second opinion, which the trial court authorized. This opinion was prepared and submitted by Anthony Jurek, Ph.D. Dr. Jurek believed that, at that time, Lilek was "competent in his knowledge of legal concepts and the skills that would allow him to assist in his own defense." He also noted that test results suggest Lilek's symptoms were highly suggestive of malingered psychopathology.

¶6 Simultaneously, Dr. Knudson again modified his position. In a letter dated October 13, 2008, he indicated that he had received additional information from the State which included an audio recorded police interview and recorded telephone calls involving Lilek, as well as behavioral information from observations made while Lilek was incarcerated. Dr. Knudson indicated that upon review of this new information, "it is clear to me that I have underestimated Mr. Lilek's functional capacity as it pertains to his competence to proceed. I no longer

believe it is appropriate to hold an opinion that he is not likely to be restored to competency in light of this new information."

¶7 Dr. Knudson was ordered to re-examine Lilek at Mendota, and thereafter he issued an updated report wherein he offered the opinion that Lilek had substantial mental capacity to understand the proceedings and assist in his defense, although he still had "reservations about his competency."

¶8 Lilek disagreed with the opinions of Drs. Knudson and Jurek, and retained Leslie Taylor, M.D., of the Dean Foundation, who offered the opinion that Lilek was not competent and he was not likely to be restored to competency.

¶9 A contested hearing regarding Lilek's competency was initiated on January 29, 2009, and concluded on May 13, 2009. On May 13, 2009, the trial court found that Lilek was competent to proceed and reinstituted proceedings.

¶10 On June 25, 2009, Lilek entered a plea of not guilty by reason of insanity. The trial court ordered Dr. Smail to conduct a mental health examination regarding Lilek's mental responsibility for his alleged conduct on May 31, 2008. Dr. Smail's report, dated August 24, 2009, notes that:

> Mr. Lilek comes to the court with a lifelong history of marked deficits in his psychological functioning yielding current diagnoses of Cognitive Disorder due to Brain Injury, Mood Disorder NOS and Borderline Intellectual Functioning. I believe that those diagnoses would have applied to him at the time of the alleged offenses. The first two mentioned diagnoses constitute a mental defect and a mental disease respectively as those terms are understood in the Wisconsin Jury Instructions. Thus, I believe that Mr. Lilek does meet diagnosed criteria for the threshold question as to the presence of a mental disease or defect.
>
> In spite of that initial finding, I do not believe that the facts ultimately support his special plea. I believe that the facts are replete with evidence indicating that Mr. Lilek

> proceeded with an assault that he contemplated prior to acting on it and in a fashion designed to at least in his poor judgment to minimize the probability that he would be apprehended.

¶11 Lilek retained the services of R. Bronson Levin, Ph.D., to render an opinion regarding the issue of his mental responsibility. Dr. Levin offered the opinion that:

> Although Mr. Lilek becomes psychotic when not properly medicated, he was taking his antipsychotic medications at the time. His thinking about the crime was not psychotic, delusional, or absent a sense of wrong. The planning involved negates an argument for an irresistible impulse. Although he engages in fantasy of being a superhero comic figure, he does not attribute his actions that night to this alter identity.
>
> I cannot testify that Matthew Lilek was incapable of understanding that his actions were wrong or that he could not restrain himself from acting.

¶12 On January 14, 2010, Lilek entered pleas of no contest to the charges of second-degree sexual assault with the use or threat of force or violence, and aggravated battery—bodily harm by conduct creating substantial risk of great bodily harm. The burglary charge was dismissed.

¶13 At the January 14, 2010 hearing, the State placed the plea negotiations between the parties on the record, which were confirmed by Lilek's counsel and by Lilek. The trial court then conducted a colloquy with the defendant and his attorney, reviewing the charges and the penalties that could be imposed; the fact that the court is not bound by plea negotiations; and the plea questionnaire/waiver of rights form and addendum form, which Lilek confirmed he discussed with counsel and that he understood. The trial court also reviewed with Lilek the rights he was giving up by entering his pleas and confirmed that he is currently prescribed medication, and that although he did not take it before his

court appearance, he was able to understand the proceedings. Lilek's attorney also discussed the time that he had taken with Lilek to discuss these matters and to ensure that Lilek understood the nature and elements of the offenses, as well as possible motions and defenses.

¶14 The trial court subsequently sentenced Lilek to thirty-five years in the state prison system, consisting of twenty years of initial confinement and fifteen years of extended supervision on the sexual assault count, and a concurrent term of six years consisting of three years of initial confinement and three years extended supervision on the aggravated battery count.

¶15 On June 4, 2012, Lilek filed a postconviction motion to withdraw his pleas and for resentencing, asserting that his pleas were not knowingly, voluntarily, or intelligently entered and, as such, the trial court did not adequately fulfill its responsibilities under with WIS. STAT. § 971.08. Lilek further argued that if the trial court failed to allow him to withdraw his pleas, it would result in a manifest injustice. Lilek also asserted that the trial court erroneously exercised its sentencing discretion and that he was sentenced on erroneous information that was relied on by the trial court. As such, he requested that the sentences be vacated and that he be resentenced.

¶16 On August 6, 2012, the trial court denied Lilek's motion without a hearing. On August 21, 2012, Lilek filed a notice of appeal. Following briefing, this court reversed the trial court's postconviction order and remanded the matter back to the trial court for an evidentiary hearing on the voluntariness of Lilek's pleas. *See* ***State v. Lilek***, No. 2012AP1855-CR, unpublished slip op. (WI App Nov. 13, 2013) (***Lilek I***). This court further found that consideration of the other issues raised in ***Lilek I*** were thus premature, and took no action on them. *See* ***id.***

¶17 On March 25, 2014, the post-remand court[2] conducted the postconviction hearing wherein Lilek sought to withdraw his pleas, contending that the trial court did not adequately fulfill its responsibilities under WIS. STAT. § 971.08(1)(a), asserting that his pleas were not entered voluntarily, knowingly, and intelligently.

¶18 The post-remand court denied Lilek's motion finding that:

> [T]he [S]tate has presented a clear and convincing case that Mr. Lilek did understand the nature of the charges, the agreement that he entered into, and the likely consequences of his plea.
>
> The Court also properly inquired of counsel, and counsel answered and inquired of the defendant, as to the elements of the offense that Mr. Lilek was pleading guilty to, in particular the sexual assault, and was able to conclude from the record that Mr. Lilek had an adequate understanding to go forward with the plea. And Mr. Lilek did nothing by his interaction with the Court to give the Court any reason to think otherwise.
>
> And counsel, despite his reservations about the defendant, spent from this record an adequate and appropriate amount of time with Mr. Lilek reviewing all of these matters before the court trial or before the plea hearing.

¶19 Lilek filed a notice of appeal on April 7, 2014, renewing his appeal from the judgment of conviction as entered on April 13, 2010, and the order denying his motion for postconviction relief as entered on August 6, 2012. Additionally, Lilek appeals the post-remand court's April 1, 2014 order denying his motion to withdraw his pleas. As noted, in the present appeal, Lilek is

[2] The Honorable Rebecca Dallet presided over the plea and sentencing hearings and issued the postconviction order. The Honorable Stephanie Rothstein presided over the post-remand evidentiary proceedings.

appealing the most recent decision of the post-remand court and seeks the relief as requested in ***Lilek I***.

## DISCUSSION

¶20 On appeal, Lilek makes the following arguments: (1) that he did not enter his pleas voluntarily, knowingly, and intelligently; (2) that the trial court erroneously exercised its discretion in imposing sentences with regard to these matters, which included the consideration of misinformation; and (3) the trial court should not have ordered another competency examination after the initial report opined that Lilek was incompetent and not likely to regain competency. We discuss each in turn.

### I. Lilek's Pleas Were Knowing, Intelligent, and Voluntary.

¶21 Whether a plea is knowing, intelligent, and voluntary is a question of constitutional fact. ***State v. Trochinski***, 2002 WI 56, ¶16, 253 Wis. 2d 38, 644 N.W.2d 891. "We review constitutional questions independent of the conclusion of the lower courts." ***State v. Van Camp***, 213 Wis. 2d 131, 140, 569 N.W.2d 577 (1997). We accept the trial court's findings of fact unless they are clearly erroneous. *See* ***State v. Brown***, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906. We independently determine whether those facts demonstrate that a defendant's pleas were knowingly, intelligently, and voluntarily made. See ***id.***

¶22 In order to withdraw a plea after sentencing, the defendant must establish by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice. *See* ***State v. Cain***, 2012 WI 68, ¶25, 342 Wis. 2d 1, 816 N.W.2d 177. "One way for a defendant to meet this burden is to show that he did not knowingly, intelligently, and voluntarily enter the plea." ***Brown***, 293 Wis.

2d 594, ¶18. When pleas are not knowingly, intelligently, and voluntarily made, a defendant is entitled to withdraw those pleas as a matter of right because such a plea "violates fundamental due process." *See* ***Van Camp***, 213 Wis. 2d at 139.

¶23 In ***Lilek I***, this court determined that Lilek had made a *prima facie* showing that his plea was not knowingly, intelligently, and voluntarily entered given Lilek's disabilities. *See* ***id.*** p. 20. Once the defendant meets this burden, the burden then shifts to the State to prove by clear and convincing evidence that Lilek's plea was knowingly, intelligently, and voluntarily made despite the identified defects in the plea colloquy. ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). The supreme court in ***Bangert*** indicated that:

> [M]erely concluding that the plea colloquy in this case was inadequate does not define the procedures which a trial court judge must follow in accepting a plea of guilty or no contest. Nor does it necessarily indicate that the defendant lacked the requisite understanding and knowledge to make his plea constitutionally valid.
>
> Although the court must "[a]ddress the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge," Section 971.08(1)(a), Stats., the statute does not explain how that determination should be made. This court cannot overemphasize the importance of the trial court's taking great care in ascertaining the defendant's understanding of the nature of the charge. The prospect of imprisonment for a defendant "demands the utmost solicitude of which courts are capable in canvassing the matter with the accused…."

***Id.*** at 266 (citations omitted; quotation marks, second set of brackets, and ellipses in original). Upon review, the State is free to utilize the entirety of the record to demonstrate that, under the totality of the circumstances, Lilek knew and understood his constitutional rights, and that his plea was knowingly, voluntarily, and intelligently entered. *See* ***State v. Bollig***, 2000 WI 6, ¶53, 232 Wis. 2d 561, 605 N.W.2d 199.

¶24 The supreme court has further stated:

> A court must determine whether the defendant can understand the proceedings and assist counsel "with a reasonable degree of rational understanding." Although a defendant may have a history of psychiatric illness, a medical condition does not necessarily render the defendant incompetent to stand trial. To determine legal competency, the court considers a defendant's present mental capacity to understand and assist at the time of the proceedings.

***State v. Byrge***, 2000 WI 101, ¶31, 237 Wis. 2d 197, 614 N.W.2d 477 (citations omitted).

¶25 At the post-remand evidentiary hearing on March 25, 2014, the State called Attorney Steven Kohn as its sole witness. Attorney Kohn testified that he represented Lilek at the time that he entered his pleas. Attorney Kohn also testified that he was aware of Lilek's limitations, and that he believed that Lilek was only able to function at a very low level. While Attorney Kohn had a question as to Lilek's competency from the moment he undertook his representation, he deferred to the trial court's competency determination. He also testified that, "if you took the time that we took, I believe [Lilek] could understand the very, very basic concepts that we were dealing with."

¶26 Attorney Kohn further testified that, "based upon the in depth discussions that we have had that [Lilek] truly does understand the very basic rights that he is giving up and he understands what those are." Attorney Kohn testified that he reviewed with Lilek the elements of the offenses, the relevant jury instructions, and the various plea forms, which included a review of Lilek's constitutional rights and the rights he would be giving up by entering his pleas. Attorney Kohn indicated that, "I went through the plea form with him and we broke down each and every line of the plea form to make sure that he understood

the words, to make sure that he understood and could visualize what we were talking about."

¶27 Attorney Kohn further testified as to the repetitious time he took with Lilek to ensure that he understood every aspect of the proceedings. This started with Lilek's recollections as to events, his motivation, and subsequent discussions based on these recollections.

¶28 Attorney Kohn testified that he believed that the pleas entered by Lilek were "knowing and voluntary based on my interaction with him on the days that I explained this to him.… [W]hen I was the person doing the questioning [of Lilek], I believe that was on a very basic level, which is what the doctors said was all that was necessary, I believe that he understood."

¶29 In its decision, the post-remand court noted that it is the responsibility of the court to ensure that a defendant understands the nature of the crimes to which he or she is pleading. In referencing the ***Bangert*** decision, the post-remand court noted that this can be accomplished in three ways. First, the trial court can summarize the elements of the offense(s) from the jury instructions or the statute. *See* ***id.***, 131 Wis. 2d at 268. Second, the trial court can inquire of defense counsel whether he or she explained the nature of the charges to the defendant and request counsel to summarize the extent of the explanation, including a reiteration of the elements. *See* ***id.*** Third, the trial court can expressly refer to the record or other evidence indicating the defendant's knowledge of the nature of the charge that was established prior to the plea. *See* ***id.*** Here, the post-remand court found that the trial court "engaged in a combination of all three of those things."

¶30 The post-remand court ultimately denied Lilek's motion finding that:

> [T]he [S]tate has presented a clear and convincing case that Mr. Lilek did understand the nature of the charges, the agreement that he entered into, and the likely consequences of his plea.
>
> The [c]ourt also properly inquired of counsel, and counsel answered and inquired of the defendant, as to the elements of the offenses that Mr. Lilek was pleading guilty to, in particular the sexual assault, and was able to conclude from the record that Lilek had an adequate understanding to go forward with the plea. And Mr. Lilek did nothing by his interaction with the [c]ourt to give the [c]ourt any reason to think otherwise.
>
> And counsel, despite his reservations about the defendant, spent from this record an adequate and appropriate amount of time with Mr. Lilek reviewing all of these matters before trial or before the plea hearing.

¶31 The trial court previously found Lilek to be competent, an opinion that was shared by Drs. Knudson and Jurek after an extended assessment process. Further, Drs. Smail and Levin opined that Lilek was not an appropriate candidate for a special plea. Dr. Smail indicated that "the facts are replete with evidence indicating that Mr. Lilek proceeded with an assault that he contemplated prior to acting on it and in a fashion designed to at least in his poor judgment to minimize the probability that he would be apprehended." Dr. Levin further opined that Lilek was not "incapable of understanding that his actions were wrong or that he could not restrain himself from acting."

¶32 The post-remand court was free to rely on this information, as well as the testimony presented at the post-remand evidentiary hearing. Upon review of the entirety of the record, we conclude that the State has met its burden of proof in establishing by clear and convincing evidence that Lilek entered his pleas knowingly, intelligently, and voluntarily. We further conclude that Lilek has

failed to establish by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice.

## II. The Trial Court Properly Exercised Its Sentencing Discretion.

¶33 Lilek argues that the trial court erroneously exercised its discretion by failing to properly consider Lilek's disabilities, and by failing to fashion a sentence in light of those disabilities. Lilek asserts that because of his disabilities, the trial court did not believe that he could be rehabilitated, treated, or monitored, and treated them as aggravating factors. Lilek also asserts that the sentence imposed was too harsh, and that the trial court placed too much weight on one sentencing factor—the protection of the public—in the face of other contravening considerations. We disagree.

¶34 Sentencing falls within the discretion of the trial court. ***McCleary v. State***, 49 Wis. 2d 263, 275, 182 N.W.2d 512 (1971); ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. When imposing a sentence, the trial court must identify the objectives of its sentence, which include protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. ***Gallion***, 270 Wis. 2d 535, ¶40. In determining the sentencing objectives, the trial court must consider a variety of factors, including the gravity of the offense, the character of the defendant, and the need to protect the public. ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. The weight assigned to each factor is left to the trial court's discretion. *See* ***id.*** Moreover, the amount of explanation required for each sentence varies from case to case. ***Gallion***, 270 Wis. 2d 535, ¶39. Furthermore,

> [S]o long as a sentencing court has considered the proper factors, explained its rationale for the overall sentence it imposes, and the sentence is not unreasonable, the court

> does not erroneously exercise its discretion simply by failing to separately explain its rationale for each and every facet of the sentence imposed.

***State v. Matke***, 2005 WI App 4, ¶19, 278 Wis. 2d 403, 692 N.W.2d 265.

¶35 A sentence is unduly harsh "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 (1975). We review claims for unduly harsh sentences under the erroneous exercise of discretion standard. *See* ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. If, after reviewing the sentencing record, we determine that the trial court considered the proper factors and articulated the objectives of the sentence imposed, we will not overturn the sentence. *See* ***Gallion***, 270 Wis. 2d 535, ¶17.

¶36 While a trial court determines how much weight to give to each factor, we recognize a "strong policy against interference with the discretion of the trial court in passing sentence." *See* ***State v. Macemon***, 113 Wis. 2d 662, 670, 335 N.W.2d 402 (1983). "In any instance where the exercise of discretion has been demonstrated, this court follows a consist[e]nt and strong policy against interference with the discretion of the trial court in passing sentence." ***McCleary***, 49 Wis. 2d at 281. We begin, therefore, with the presumption that the trial court acted reasonably in imposing a sentence. *See* ***State v. Klubertanz***, 2006 WI App 71, ¶20, 291 Wis. 2d 751, 713 N.W.2d 116.

¶37 At sentencing, the State recommended a term of confinement in the state prison system, with the length and all other terms to be left to the discretion of the trial court. The defense recommended that the trial court await the outcome

of a petition for protective placement and, if granted, place Lilek in a protective setting that meets certain concerns. The defense conceded, however, that if the protective placement was not granted, prison would be "the only other option." The PSI writer recommended a total sentence of between ten and twelve years of initial confinement and between four and five years of extended supervision. Lilek's total combined exposure was twenty-eight years of initial confinement and eighteen years of extended supervision.

¶38 When the trial court sentenced Lilek, it acknowledged the three factors that it is required to consider: the seriousness of the offense, the character of the defendant, and the need to protect the public. *See* ***Harris***, 326 Wis. 2d 685, ¶28.

¶39 In discussing the seriousness of the offenses, the trial court characterized them as "very serious." The trial court found it aggravating that the victim was vulnerable because of her age and the fact that she was blind and mostly deaf. The trial court also found it aggravating that Lilek specifically targeted the victim because of her vulnerabilities, stating that Lilek planned the offense so that he would not get caught, and chose a victim who could not see him, making it "easier for him to commit the crime." The trial court noted that Lilek disguised himself to pretend to be the victim's son in order to gain access to the victim's apartment. The trial court also looked at the nature of the victim's injuries in light of her age, and the planning and deception involved in perpetrating this offense.

¶40 The trial court sufficiently addressed Lilek's character—both positive and negative. The trial court spent a considerable amount of time discussing Lilek's mental health issues, noting that Lilek acted "differently when

not being observed," bringing up the possibility of malingering, though not disputing that Lilek did have legitimate disabilities. The trial court fully considered Lilek's many diagnoses—including a seizure disorder, mental health disorders, brain injury, blindness, and mild mental retardation—but remained concerned that Lilek could make up or exaggerate things when needed. Although Lilek lacked a prior criminal record, the trial court found it troubling that Lilek had engaged in similar behavior in the past. The trial court specifically noted that Lilek had previously gone into a woman's apartment, pushed against her body, lifted up her shirt, and fondled her breasts. The trial court also noted that, although Lilek's mental health issues may have contributed to his behavior, they also likely precluded Lilek from being able to control his behavior, making the case even more "aggravating" and "disturbing."

¶41 The trial court also considered the need to protect the public, acknowledging that the need to protect the public carried more weight than the other factors. The trial court noted that four different people came forward to tell of Lilek's bragging about the offenses. Moreover, the trial court discussed its belief that Lilek's mental health issues contributed to his dangerousness and recidivism risk. In summarizing why it believed Lilek was dangerous to the community, the trial court stated:

> [H]e has the ability to plan an attack like this on a vulnerable victim and has shown the willingness to carry it out and to be stopped only by the ringing of a doorbell. I don't know what would have happened, no one knows had that doorbell not been rung that day.
>
> But he was able to carry out this plan and really only stop when he thought he was going to get caught. So I have to take that into consideration, even aside from all of his limitations as part of Mr. Lilek, that he is a man who is able and willing to carry out sexual assaults on a very vulnerable victim, chosen because she was vulnerable and wouldn't report it.

¶42 Lilek argues that the trial court placed too much weight on the protection of the public in the face of contravening considerations. The trial court, however, has the discretion to assign more weight to a certain factor when imposing sentence. *See* ***id.*** Here, while the trial court acknowledged that the need to protect the public carried more weight than the other factors, it properly considered all the factors it was required to consider.

¶43 Lilek further argues that because his disability rendered him unable to appreciate the wrongfulness of his conduct and unable to check his behavior, that he should have been committed for treatment in protective placement rather than sent to prison. The State, on the other hand, argues that under the relevant criminal commitment statutes, the trial court lacked the authority to order the kind of protective placement that Lilek seeks. Nevertheless, the trial court did consider protective placement, but, because of the reasons discussed above, rejected it.

¶44 Finally, Lilek appears to argue that the total sentence imposed—forty-one years, consisting of twenty-three years of initial confinement and eighteen years of extended supervision—was unduly harsh. Lilek's total exposure was forty-six years. A sentence "within the limits of the maximum sentence is unlikely to be unduly harsh." ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. We acknowledge that Lilek's forty-one year sentence is close to the maximum allowable under the law. However, upon our review of the entirety of the record, as well as the trial court's thorough discussion of the relevant factors, as discussed above, we do not find the sentence to be unduly harsh under the circumstances.

¶45 Accordingly, after our review of the record, we conclude that the trial court did not erroneously exercise its discretion when sentencing Lilek.

## III. Competency Evaluations.

¶46 Lastly, Lilek argues that the trial court violated strict time limits imposed by WIS. STAT. § 971.14 when it ordered multiple competency evaluations. Lilek believes that Dr. Knudson's second report from August 28, 2008, constituted the end of his competency evaluation, and that any further examinations were "serial court appointments" prohibited by § 971.14. We disagree.[3]

¶47 Statutory construction is a question of law that we review *de novo*. *See* ***State v. Leitner***, 2002 WI 77, ¶16, 253 Wis. 2d 449, 646 N.W.2d 341. "When interpreting a statute, our purpose is to discern legislative intent. To this end, we look first to the language of the statute as the best indication of legislative intent. Additionally, we may examine the statute's context and history." ***Village of Lannon v. Wood-Land Contractors, Inc.***, 2003 WI 150, ¶13, 267 Wis. 2d 158, 672 N.W.2d 275. Further, we will reject a literal reading of a statute that "'would lead to an absurd or unreasonable result that does not reflect the legislature's intent.'" *See* ***State v. Jennings***, 2003 WI 10, ¶11, 259 Wis. 2d 523, 657 N.W.2d 393 (citation and one set of quotation marks omitted). "In interpreting a statute, we are to presume that 'the legislature intends for a statute to be interpreted in a

[3] The State, citing ***State v. Oakley***, 2001 WI 103, ¶¶22-23, 245 Wis. 2d 447, 629 N.W.2d 200, asserts that Lilek, by the entry of his no-contest plea, has waived any and all non-jurisdictional claims and defects. Conversely, Lilek, citing ***Sheboygan County Department of Social Services v. Matthew S.***, 2005 WI 84, 282 Wis. 2d 150, 698 N.W.2d 631, asserts that the time limits as set forth in WIS. STAT. § 971.14 are strict time limits and as such cannot be waived. Neither side, however, further addresses or develops their respective positions. Nevertheless, our analysis of the merits of Lilek's argument fully disposes of the issue and, therefore, we need not discuss the waiver argument further. *See* ***Miesen v. DOT***, 226 Wis. 2d 298, 309, 594 N.W.2d 821 (Ct. App. 1999) (we decide cases on the narrowest grounds possible).

manner that advances the purposes of the statute.'" ***State v. Carey***, 2004 WI App 83, ¶8, 272 Wis. 2d 697, 679 N.W.2d 910 (citation omitted).

¶48 WISCONSIN STAT. § 971.14(2)(a) specifically provides that: "The court shall appoint one or more examiners having the specialized knowledge determined by the court to be appropriate to examine and report upon the condition of the defendant." ***Id.*** Section 971.14(2)(g) further provides that: "The defendant may be examined for competency purposes at any stage of the competency proceedings by physicians or other experts chosen by the defendant or by the district attorney, who shall be permitted reasonable access to the defendant for purposes of the examination." ***Id.***

¶49 Here, Lilek argues that the State was "doctor shopping" when it asked Dr. Jurek to examine him after Dr. Knudson had already found him incompetent. This argument is misguided.

¶50 On July 11, 2008, the trial court ordered a competency evaluation. This initial evaluation was performed by Dr. Knudson. Dr. Knudson concluded that Lilek was not competent and not likely to regain competence. Following the submission of this report, the State requested a second opinion, which the court granted. Dr. Jurek's report recommended treatment and reevaluation; ultimately, Dr. Jurek found Lilek competent to proceed. Subsequently, Dr. Knudson submitted a letter stating that he changed his position regarding Lilek's competency. The defense also hired its own expert, Dr. Taylor, who found Lilek was not competent. On May 13, 2009, following the submission of all reports, the trial court held a competency hearing and found Lilek competent to proceed.

¶51 It appears that Lilek is arguing that the time frames enumerated in WIS. STAT. § 971.14(2)(c) were violated because the entire competency evaluation

period—including all the reports and the eventual hearing—took approximately ten months, not fifteen or thirty days. As a preliminary matter, some of this delay is attributable to Lilek being unable to attend scheduled court hearings for reasons related to his cognitive issues. The statutes, however, do not require the trial court to conclude its investigation into the defendant's competency within a set period of time. The statutes only require that an inpatient competency examination take place within fifteen days of the defendant's admission to the institution, or within thirty days for outpatient examinations. *See* § 971.14(2)(c). Furthermore, the inpatient competency examination time limit can be extended by fifteen days. *See* ***id.*** Thereafter, the court retains the authority to order more examinations—and the statute allows the State and the defense to request their own experts—before the court holds a competency hearing. *See* §§ 971.14(2)(g), (3), and (4). Only after all the reports are generated can the competency hearing take place. *See* §§ 971.14(3) and (4).

¶52 To read the statute in a manner that requires the entire competency investigation and ruling to be concluded within fifteen or thirty days would lead to absurd or unreasonable results. *See* ***Jennings***, 259 Wis. 2d 523, ¶11. Most notably, the statutes permit the State and the defense to request their own expert. However, they are only likely to make this request if they disagree with the initial report. If the initial examination is not completed until the final day permitted by the statutes for that examination, it cannot be expected that another examination be conducted within the same time frame.

¶53 The statutory scheme contemplates the need for multiple examinations. Moreover, Lilek was not committed throughout the pendency of the proceedings; he was returned to jail each time his inpatient examinations were

completed, in compliance with WIS. STAT. § 971.14(2)(d). Accordingly, we conclude that the trial court did not violate the time limits imposed by § 971.14.

¶54 For the foregoing reasons, we affirm.

*By the Court.*—Judgment and orders affirmed.

Not recommended for publication in the official reports.