

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2017

Diane M. Fremgen
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. 2016AP1724-CR

Cir. Ct. No. 2015CF142

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW W. HENDRICKSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for La Crosse County: ELLIOTT M. LEVINE, Judge. *Affirmed.*

Before Lundsten, Sherman and Blanchard, 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. Andrew Hendrickson appeals a judgment of conviction for repeated sexual assault of the same child. He also appeals an order denying his motion for postconviction relief. Hendrickson argues that, when sentencing him, the circuit court improperly considered how old the victim will be when Hendrickson is released from confinement. We reject his arguments and affirm.

BACKGROUND

¶2 Hendrickson pled guilty to repeated sexual assault of the same child. The victim was the seven-year-old daughter of Hendrickson's live-in girlfriend. At sentencing, the circuit court heard testimony from two witnesses regarding the impact that the assaults had on the victim. The victim's mother asked the court to impose a sentence that would keep Hendrickson behind bars until her daughter was "a mature adult" so that her daughter did not have to be afraid that Hendrickson would find her. A friend of the victim's mother testified about the child's anxiety and other behavioral changes since the assaults. She also requested a sentence that would keep Hendrickson in prison until the victim was "a mature adult" comfortable enough to face him if they ever came into contact.

¶3 In imposing its sentence, the circuit court stated that it was giving a lot of weight to the mother's desire that the victim have peace of mind through her developmental years. The court explained that a lengthy sentence was important to the child victim's recovery, and that the victim might not be at a stage of development when she could feel safe until her early twenties. The court imposed a sentence of 13 years of initial confinement and 5 years of extended supervision.

¶4 Hendrickson filed a postconviction motion challenging the sentence, which the circuit court denied. This appeal followed.

DISCUSSION

¶5 Hendrickson argues that the victim’s age at the time of a defendant’s anticipated release is not a proper consideration for sentencing. *See State v. Alexander*, 2015 WI 6, ¶¶22-24, 360 Wis. 2d 292, 858 N.W.2d 662. Hendrickson correctly points out that, in *Alexander*, the court wrote: “A circuit court erroneously exercises its sentencing discretion when it ‘actually relies on clearly irrelevant or improper factors.’” *Id.*, ¶17 (quoted source omitted). Hendrickson contends that, because the court here relied on an improper factor, he is entitled to resentencing. *See State v. Tiepelman*, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1 (remanding for resentencing based on circuit court error).

¶6 Hendrickson appears to make two arguments in support of his general argument that the child’s age at the time of release is an improper factor. We reject both.

¶7 Hendrickson first seems to suggest that the consideration of the child’s age at the time of release is an improper factor because it does not appear in any case law identifying proper and relevant factors. This argument goes nowhere. As our case law amply demonstrates, new factors have been recognized as our sentencing case law has developed. *See State v. Gallion*, 2004 WI 42, ¶43 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. And, regardless, the consideration here squarely fits under the recognized factor that takes into account a victim’s rehabilitative needs, which may be furthered by a lengthy sentence, particularly in cases involving child sexual assault. *See State v. Jones*, 151 Wis. 2d 488, 496, 444 N.W.2d 760 (Ct. App. 1989).

¶8 Hendrickson’s second, more substantial argument appears to be that any rehabilitative benefit to his victim that might result from keeping Hendrickson

incarcerated until the victim is an adult is too speculative to be a proper sentencing factor. For example, Hendrickson attempts to rebut the State's reliance on *Jones* (the victim's rehabilitative needs are a logical extension of one of the primary factors in sentencing, namely, the need to protect the public) and *State v. Annala*, 168 Wis. 2d 453, 474, 484 N.W.2d 138 (1992) (a child victim's rehabilitative needs "may demand ... significant punishment if that will have a positive influence on the child victim's recovery from the effects of the crime"), by arguing that any benefit to the particular victim here depends on unsupported predictions. More specifically, Hendrickson argues that there is no way to predict whether Hendrickson would ever come into contact with the victim after his release because of restrictions on contact and questions about where Hendrickson might reside, and there is no way to predict whether the victim might be better able to deal with Hendrickson's release before she turns 21. According to Hendrickson, extending his Wisconsin initial confinement period for this purpose is all the more speculative because of the possibility that he will face a consecutive sentence for a separate crime in Louisiana. We are not persuaded.

¶19 In our view, it was reasonable for the circuit court to assume, based on general knowledge of child development and the fears commonly experienced by victims of sexual assault, that the victim would fear Hendrickson more while she is a child than when she is an adult. It was also reasonable for the court to assume that the victim, as a child, will more intensely experience detrimental fear based on the knowledge that Hendrickson is not incarcerated because that would mean he has the ability to track her down and have contact with her. Just because Hendrickson might initially reside in a different town or state does not prevent him from making contact with the victim, and she would understand that. Moreover, as indicated in the background section of this opinion, the circuit court's view of

the victim's vulnerability is amply supported by sentencing testimony emphasizing how important it was for the victim to feel confident that Hendrickson will be incarcerated until she is an adult.

¶10 Hendrickson takes issue with the circuit court's assessment of when the victim will become an adult. The circuit court opined that it would be most beneficial, from the victim's point of view, to provide protection from Hendrickson until the victim turned 21. Hendrickson argues that picking age 21 is unreasonable because the victim would be an adult at age 18, or might not be fully "mature" until a later age, such as 25. That is, Hendrickson argues that picking age 21 was arbitrary and, therefore, improper. We disagree. It is rational to assume that the victim will be better able to deal with Hendrickson's release at age 21 than age 18. At the same time, age 21 also strikes us as a logical stopping point that benefits Hendrickson.

¶11 Also, the possibility of Hendrickson receiving a significant sentence in Louisiana does not undercut the circuit court's approach. As Hendrickson admits, a lengthy term of incarceration in Louisiana is just a possibility and, we add, beyond the control of the circuit court here.

CONCLUSION

¶12 Because the circuit court did not rely on an improper factor in sentencing Hendrickson, the court properly denied his motion for postconviction relief.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

