

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 11, 2018**

Sheila T. Reiff  
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. 2017AP15-CR**

**Cir. Ct. No. 2015CF13**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CHRISTOPHER A. KLINE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Waukesha County: LEE S. DREYFUS, JR., Judge. *Affirmed.*

Before Neubauer, C.J., Gundrum and Hagedorn, 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. Christopher Kline appeals from a judgment convicting him of causing mental harm to a child and from a postconviction order

denying his motion to amend the judgment of conviction to vacate the requirement that he register as a sex offender. We agree that the circuit court properly exercised its discretion when it required Kline to register. Therefore, we affirm.

¶2 The criminal complaint charged Kline with second-degree sexual assault of a child under the age of sixteen. The complaint alleged that Kline took the victim to a hotel and touched the victim's intimate parts (breasts and genitals). As part of a plea agreement, Kline entered an *Alford*<sup>1</sup> plea to causing mental harm to a child. At the plea hearing, Kline agreed that the complaint alleging second-degree sexual assault of a child would form the factual basis for his plea.

¶3 At sentencing, the circuit court considered the gravity of the facts alleged in the complaint. The court observed that the complaint alleged intentional conduct utterly barred by the law and which should never have been a feature of Kline's relationship with the victim. The court found that Kline had not taken responsibility for his conduct toward the victim; Kline merely acknowledged that the victim may have been uncomfortable. The court's eight-year sentence was intended to keep Kline away from the victim until the victim reached adulthood. The court also ordered Kline not to have any contact with the victim or any unsupervised contact with any minor female. Finally, the court required Kline to engage in sex offender treatment and register as a sex offender "as long as that is required pursuant to statute under the terms of this sentence."

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<sup>1</sup> An *Alford* plea is a conditional guilty plea in which the defendant maintains his or her innocence of the charge while at the same time pleading guilty or no contest to it. *State v. Spears*, 147 Wis. 2d 429, 434-35, 433 N.W.2d 595 (Ct. App. 1988).

¶4 Postconviction, Kline moved the circuit court to amend the judgment of conviction and vacate the sex offender registration requirement because (1) the court's sentencing remarks suggested that it intended to order sex offender registration only for the four-year term of extended supervision, but the effect of the registration requirement was that Kline would have to comply with sex offender registration requirements for fifteen years after he completed his sentence; (2) the circuit court failed to properly exercise its discretion because it did not make the requisite statutory findings that the crime was sexually motivated and that sex offender registration would protect the public; and (3) registering as a sex offender was not necessary because other components of Kline's sentence were sufficient to protect the public.

¶5 The circuit court denied Kline's postconviction motion, rejecting his claim that it did not properly exercise its discretion when it required him to register as a sex offender. The court agreed that it did not specify a period during which Kline had to comply with the sex offender registry. However, the court required Kline to comply with sex offender registration as required by statute. The sex offender registration statute requires compliance with the registry for fifteen years beyond the completion of the sentence. WIS. STAT. §301.45(5)(a) (2013-14).<sup>2</sup> The court also focused on the underlying factual circumstances as set out in the complaint which was the factual basis for Kline's *Alford* plea: a sexual assault of a child under sixteen for which Kline neither took responsibility nor showed any insight into his conduct. In light of the foregoing, the court found that Kline was dangerous. Kline appeals.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

¶6 WISCONSIN STAT. § 973.048(1m)(a) gives a circuit court discretion to order a defendant to register as a sex offender<sup>3</sup> if “the underlying conduct was sexually motivated” per WIS. STAT. § 980.01(5) and if the court determines that it would be in the “interest of public protection” for the defendant to register. *State v. Jackson*, 2012 WI App 76, ¶9, 343 Wis. 2d 602, 819 N.W.2d 288. Among the factors the circuit court may consider are: the age of the victim and the defendant and their relationship, the probability that the defendant “will commit other violations in the future,” and “[a]ny other factor the court determines may be relevant.” Sec. 973.048(3)(a)-(g).

¶7 A circuit court is required to provide a “rational and explainable basis” for a sentencing-related decision. *State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262 (citation omitted).

[W]e are obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained. It is not only our duty not to interfere with the discretion of the trial judge, but it is, in addition, our duty to affirm the sentence on appeal if from the facts of record it is sustainable as a proper discretionary act.

*State v. Taylor*, 2006 WI 22, ¶21, 289 Wis. 2d 34, 710 N.W.2d 466 (alteration in original; citation omitted).

¶8 Applying these standards here, we conclude that the record supports the circuit court’s discretionary decision to require Kline to register as a sex offender. There is no basis for us to interfere with the circuit court’s exercise of sentencing discretion.

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<sup>3</sup> Kline was eligible for sex offender registration because he was sentenced for causing mental harm to a child contrary to WIS. STAT. § 948.04(1). WIS. STAT. § 973.048(1m)(a).

¶9 Although Kline entered an *Alford* plea to causing mental harm to a child, he agreed that the factual basis for his plea was found in the criminal complaint which clearly alleged a sexual assault of a child under sixteen.<sup>4</sup> There can be no serious question that the complaint alleged a sexually motivated crime, i.e., the sexual touching of the victim was done for Kline’s “sexual arousal or gratification or for the sexual humiliation or degradation of the victim.” WIS. STAT. § 980.01(5).

¶10 The record also supports a determination that it is in the interest of public protection for Kline to register as a sex offender. The circuit court found it necessary to bar Kline from having unsupervised contact with minor females, the scenario in which Kline’s victim found herself. The court also considered the victim’s age and her relationship to Kline and that Kline’s failure to take responsibility for his conduct suggested he was a risk to commit other violations in the future. *See* WIS. STAT. § 973.048(3)(a)-(g).

¶11 With regard to the circuit court’s failure to specify the length of Kline’s obligation to comply with sex offender registration, we agree with the circuit court that once it required Kline to register, the statute controlled the length of the compliance (fifteen years from the completion of the sentence). WIS. STAT. § 301.45(5)(a). At sentencing, the court noted that the sex offender registration statute would determine the length of the requirement. We see no basis for Kline’s claim that the circuit court believed the sex offender registration requirement would only apply for the four years of extended supervision.

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<sup>4</sup> The circuit court was not required to accept any assertion of innocence emanating from Kline’s *Alford* plea. *See State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 633-34, 579 N.W.2d 698 (1998).

¶12 Finally, we are not persuaded by Kline’s argument that other aspects of his sentence rendered sex offender registration unnecessary. As we have held, the circuit court properly exercised its discretion in imposing this requirement, and the record supports the circuit court’s decision.

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

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

