

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2008

David R. Schanker
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. 2006AP2802-CR

Cir. Ct. No. 2005CF16

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM G. BENNETT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

Before Brown, C.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. William G. Bennett appeals from the judgment of conviction entered against him and the order denying his motion for postconviction relief. He argues on appeal that the circuit court erred when it ordered him to register as a sex offender. Because we conclude that the circuit

court properly exercised its discretion when it ordered Bennett to register as a sex offender, we affirm.

¶2 Bennett entered a plea under *North Carolina v. Alford*, 400 U.S. 25 (1970), to one count of attempted false imprisonment with the use of a dangerous weapon, as a repeat offender. The court sentenced him to six years of initial confinement and three years and six months of extended supervision. The court also ordered him to register as a sex offender.¹

¶3 Bennett then moved for postconviction relief, arguing that the term of extended supervision was excessive under the statute, and that the sentencing court had erred when it ordered him to register as a sex offender. The court granted the motion in part, by reducing the term of extended supervision to one year and six months. The court denied the motion to vacate the sex offender registration requirement. Bennett appeals only from the portion of the order that denied his request to vacate the sex offender registration requirement.

¶4 The underlying facts are as follows. At 4 a.m. on December 30, 2004, the victim was driving to work at a hospital. It was foggy and dark. As she was driving, she noticed a car driving about 200 yards behind her. She said she was driving really slowly and she thought it was strange that the driver did not pass her. When she turned into the parking lot of the hospital where she worked, the car also turned in. When she got out of her car, she saw a man get out of the car that had followed her into the lot. The man approached her, and walked a few

¹ This conviction served as the basis to revoke Bennett's probation in another case in which he had been convicted of causing, by force, a child to view sexual activity in violation of WIS. STAT. § 948.05 (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

steps with her. She thought that he was going to ask her for directions. Then he said to her that he had “a really large knife in his pocket.” He made some sort of motion towards her, and she screamed and ran. She went into the hospital and reported it to a security guard. The guard then went outside, began talking to the man, and the man got into his car and drove away quickly.

¶5 Shortly afterwards, a sheriff’s deputy saw a car “traveling at a high rate of speed” away from the hospital without its headlights on. The deputy followed the car, and soon found it off the road at a sharp curve in the highway. The deputy ordered the driver, Bennett, out of the car. Another deputy searched the car and found a backpack that contained, among other things, a cell phone, a rechargeable electric shaver, a tube of surgical lubricant, a pair of gloves, a dark blue ski mask, a nude-colored woman’s “body wrap,” a black body dress, and two women’s blouses. A knife was not found on Bennett or in the car.

¶6 Bennett said that he was going to the hospital to have painful and bleeding ulcers treated. He said that he had a stabbing pain in his left side, and that he approached the victim to ask for help, but that she misunderstood him. English is not the victim’s first language. He admitted that he fled, and that it was a mistake to flee.

¶7 At the hearing on his postconviction motion, Bennett’s counsel argued that the court had not properly exercised its discretion when it ordered him to register as a sex offender. The court stated that Bennett had an extensive juvenile and adult criminal record that included crimes against property, alcohol and drug issues, and “sexual assault related.” The court noted that he tended to “lie, run, [and] disregard rules of supervision.” The court found that Bennett’s statements about the events of that day were “not very reliable,” and that he was a

person that the community would want to have registered. The court concluded that there was ample evidence in the record from Bennett's past conduct, and this offense involved "inappropriate, unlawful sexual-related conduct." The court denied the motion.

¶8 The first issue is the appropriate standard of review. Bennett argues that the circuit court erred because there was no reason to conclude that the offense was sexually motivated. Although he argued to the circuit court during the postconviction proceedings that this was a matter left to the circuit court's discretion, he now argues that a decision to require registration is subject to *de novo* review.

¶9 Under WIS. STAT. § 973.048(1m), a sentencing court may order a defendant to register as a sex offender under WIS. STAT. § 301.45 "if the court determines that the underlying conduct was sexually motivated, as defined in [WIS. STAT. §] 980.01(5), and that it would be in the interest of public protection to have the person report under [§] 301.45."² The statute allows the court to order sex offender registration under this part of the statute "in the exercise of [its] sentencing discretion." *State v. Martel*, 2003 WI 70, ¶16, 262 Wis. 2d 483, 664 N.W.2d 69. We review a circuit court's discretionary act for an erroneous exercise of discretion. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. We conclude that the proper standard of review for this sentencing decision is an erroneous exercise of discretion.

² Attempted false imprisonment is not one of the crimes for which sex offender registration is mandated. See WIS. STAT. § 973.048(2m).

¶10 We further conclude that the circuit court properly exercised its discretion in this case. The statute allows the court to require an offender to register when it finds that the conduct was sexually motivated and the public needs to be protected. WIS. STAT. §973.048(1m). Sexually motivated “means that one of the purposes for an act is for the actor’s sexual arousal or gratification or for the sexual humiliation or degradation of the victim.” WIS. STAT. § 980.01(5).

¶11 We agree with the circuit court that the facts here support its conclusion that requiring Bennett to register was appropriate. The facts showed that Bennett followed the victim into a deserted parking lot, he approached her as she walked, threatened her by saying he had a knife, and he then fled when approached by the police. The items the police found in Bennett’s car, as well as his criminal history, support the court’s finding that the act was sexually motivated. We conclude that the circuit court properly exercised its discretion when it required Bennett to register as a sex offender. We affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

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

