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November 11, 2020

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You are hereby notified that the Court has entered the following opinion and order:

2019AP2037-CR State of Wisconsin v. Carrie L. Metz (L.C. #2017CF952)

Before Reilly, P.J., Gundrum and Davis, JJ.

Summary disposition orders 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).

Carrie L. Metz appeals from a judgment and an order of the circuit court. Upon reviewing the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).[1] We affirm.

In September 2016, Justin Johnson, a felon convicted of second-degree sexual assault of a child, removed his GPS monitoring bracelet and absconded from supervision. On July 24, 2017, law enforcement received a tip that Metz, Johnson's fiancé, was harboring him in her parents' house. Police went to the house and received permission from Metz's parents to search for Johnson; on a return visit later that day, they found Johnson hiding in a bedroom. During these two visits, Metz was uncooperative: she yelled at the officers to leave, insisted that her mother tell them to leave, and repeatedly denied any knowledge of Johnson's whereabouts.

In a written statement to police, Metz admitted to harboring Johnson at her parents' house, where the couple had been living with their son and three other minor children. At the time, Metz was serving the extended supervision portion of a sentence for child neglect causing death; her extended supervision was revoked for her role in hiding Johnson. Metz was ordered to serve the remaining portion of her sentence: three years, two months, and six days.

On March 26, 2018, Metz pled guilty to harboring a felon. At the plea hearing, the circuit court explained to Metz, "The Court could go with a concurrent sentence. The Court could also go with a consecutive sentence. You understand that?" Metz answered, "Yes." At the sentencing hearing, the circuit court considered the seriousness of the offense, the need to protect the public, and Metz's potential for rehabilitation. Based on these considerations, the court sentenced Metz

[1] All references to the Wisconsin Statutes are to the 2017-18 version.

to two years of initial confinement and two years of extended supervision, consecutive to the time she was serving because of revocation.

Metz filed a postconviction motion, arguing that: (1) the circuit court erroneously exercised its discretion by imposing an unduly harsh sentence, and (2) her trial counsel provided ineffective assistance at sentencing by promising a concurrent sentence and by failing to introduce character letters. The circuit court denied the motion after a ***Machner***[2] hearing. It found that the sentence was not unduly harsh and that counsel did not provide ineffective assistance. Metz now appeals.

On appeal, Metz contends that her sentence is unduly harsh. We review a circuit court's holding that a sentence is not unduly harsh for an erroneous exercise of discretion. ***State v. Grindemann***, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. We will uphold a circuit court's exercise of discretion "if it appears from the record that the court applied the proper legal standards to the facts before it, and through a process of reasoning, reached a result which a reasonable judge could reach." ***Id.***

"A sentence is unduly harsh or unconscionable '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.'" ***State v. Cummings***, 2014 WI 88, ¶72, 357 Wis. 2d 1, 850 N.W.2d 915 (citation omitted). "A sentence well within the limits of the maximum sentence is unlikely to be unduly

[2] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

harsh or unconscionable." ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

We hold that the circuit court did not erroneously exercise its discretion when it found the sentence not unduly harsh. The court properly considered the relevant factors in determining Metz's sentence—"The protection of the public," "The gravity of the offense," "The rehabilitative needs of the defendant," and any applicable mitigating and aggravating factors. *See* WIS. STAT. § 973.017(2). The court began by considering the protection of the public and the seriousness of the offense. The court stated that when Metz harbored Johnson, a sex offender, "we don't know what he's doing with whom or when." The court further stated that Metz "chose to be deceptive in a very serious matter with a felon who's on a very serious charge."

The circuit court considered Metz's rehabilitative needs and found little potential for rehabilitation. The court noted Metz's long history of criminal activity. It also found that Metz's statements to the court lacked remorse; for example, Metz appeared to blame others for her actions, stating that she and Johnson "got dealt a bad hand" and that "[a] second chance wasn't offered to me and I believe I deserved one." The circuit court, however, did also consider mitigating factors; for example, Metz received "[s]traight A's from Tremper High School" and had a good employment history.

Indeed, it would appear that these mitigating factors played a role in Metz's sentence, which fell years short of the statutory maximum. Metz received a four-year sentence, consisting of two years of initial confinement and two years of extended supervision, consecutive to the time she was already serving. Metz's maximum possible sentence, however, was seven and one-half years of imprisonment, with a maximum of five and one-half years of initial confinement. *See*

WIS. STAT. §§ 939.50(3)(i); 939.62(1)(b); 973.01(2)(b)9.(c)1. A sentence well within the maximum likely does not constitute an unduly harsh or unconscionable sentence. ***Scaccio***, 240 Wis. 2d 95, ¶18.

Metz nonetheless contends that her sentence was unduly harsh because she received a consecutive sentence, not a concurrent sentence. However, when deciding to impose a consecutive sentence, a circuit court need only consider the same factors as it considered when determining sentence length. ***State v. Berggren***, 2009 WI App 82, ¶46, 320 Wis. 2d 209, 769 N.W.2d 110. As stated above, the circuit court considered those factors at Metz's sentencing. In addition, the previously imposed sentence for child neglect causing death is separate from Metz's current sentence for harboring a felon. The existence of a previous sentence does not make a new sentence unduly harsh. Thus, the circuit court did not erroneously exercise its discretion when it found that Metz's sentence was not unduly harsh or unconscionable.

Metz next argues that her trial counsel provided ineffective assistance of counsel. "Ineffective assistance of counsel claims 'present mixed questions of fact and law.'" ***State v. Reinwand***, 2019 WI 25, ¶18, 385 Wis. 2d 700, 924 N.W.2d 184 (citation omitted). We review a circuit court's factual findings under the clearly erroneous standard, but we review de novo whether counsel's performance was objectively deficient and whether that deficient performance prejudiced the defendant. ***Id.***; ***State v. Maday***, 2017 WI 28, ¶¶25, 54, 374 Wis. 2d 164, 892 N.W.2d 611; *see also* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

To show deficient performance, the defendant must prove that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Strickland***, 466 U.S. at 687. In other words, "the defendant must show that …

counsel's representation 'fell below an objective standard of reasonableness' considering all the circumstances." ***State v. Carter***, 2010 WI 40, ¶22, 324 Wis. 2d 640, 782 N.W.2d 695 (citation omitted). To prove prejudice, the defendant must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Reinwand***, 385 Wis. 2d 700, ¶42 (citation omitted).

Metz raises two grounds for her ineffective assistance of counsel claim, first arguing that counsel was ineffective by promising her a concurrent sentence. Trial counsel, however, testified that he did not guarantee a concurrent sentence, and the circuit court found this testimony credible. We uphold this factual finding, as nothing in the record indicates clear error. *See* ***id.***, ¶18. In view of that finding we need not decide whether such a promise, if made, could have risen to the level of ineffective assistance of counsel warranting plea withdrawal or re-sentencing, though we note that such a claim would appear dubious from a prejudice standpoint, in light of Metz's express acknowledgement at the plea hearing, as part of the colloquy with the trial court, that she understood that the trial court was free to impose a consecutive sentence.

Metz further argues that counsel was ineffective by not introducing positive character letters at sentencing. Trial counsel, however, did discuss Metz's positive characteristics at the sentencing hearing, stating that Metz had a high school education, good employment history, the ability to support her son, sobriety, and her family's support. Metz does not explain what, if anything, the character letters—which are not in the record and described only in very bare detail—would have added to this information. Moreover, the circuit court explicitly stated that "all the character witnesses in the world" would not have altered its sentencing decision. Therefore, Metz again cannot prove any prejudice resulting from counsel's alleged deficiency.

We hold that the circuit court did not impose an unduly harsh sentence and that trial counsel was not ineffective.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals