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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 28, 2024

To:

Hon. Laura F. Lau
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Michael Davis Thurston
Electronic Notice

Craig D. Miller, #666702
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2021AP2024 State of Wisconsin v. Craig D. Miller (L.C. #2017CF443)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Craig D. Miller appeals pro se from an order denying his motion for postconviction relief. He seeks either plea withdrawal or resentencing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Miller was convicted following guilty pleas to identity theft, exposing genitals to a child, and three counts of possession of child pornography. He was accused of using a fake online identity to communicate with and obtain nude images from teenage girls in multiple states. Thirteen additional counts were dismissed and read-in.[2] For his actions, the circuit court imposed an aggregate sentence of ten years of initial confinement and ten years of extended supervision.

Three years after sentencing, Miller filed a pro se motion for postconviction relief. In it, he sought plea withdrawal due to ineffective assistance of counsel. Specifically, Miller accused counsel of directing him to plead to a count (exposing genitals to a child) that lacked a factual basis. Alternatively, Miller sought resentencing due to a perceived disparity between the facts of the case and the sentence he received, which he described as "clearly extreme." The circuit court denied the motion without an evidentiary hearing. This appeal follows.

On appeal, Miller renews the arguments made in his postconviction motion.[3] We begin with his request for plea withdrawal due to ineffective assistance of counsel.

A defendant who seeks to withdraw a plea after sentencing must prove by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. *See* ***State v. Taylor***, 2013 WI 34, ¶24, 347 Wis. 2d 30, 829 N.W.2d 482. One way to establish a manifest

[2] The additional counts were exposing genitals to a child, two counts of causing mental harm to a child, three counts of sexual exploitation of a child, and seven counts of possession of child pornography.

[3] Miller also raises new arguments in his appellant's brief (e.g., complaining that counsel failed to interview the victims and failed to object to the age of one of them). We need not consider such arguments. *See* ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) ("[I]ssues not presented to the circuit court will not be considered for the first time on appeal.").

injustice is to demonstrate that the defendant received ineffective assistance of counsel. ***State v. Dillard***, 2014 WI 123, ¶84, 358 Wis. 2d 543, 859 N.W.2d 44.

To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that such performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To show prejudice in the context of a request for plea withdrawal, a defendant must demonstrate "'that there is a reasonable probability that, but for the counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" ***State v. Bentley***, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996) (citation omitted).

Here, Miller's postconviction motion failed to satisfy the prejudice prong of the ineffective assistance of counsel test. That is, it did not explain why, but for counsel's alleged errors, Miller would not have pleaded guilty and would have insisted on going to trial. As noted by the State, Miller received significant consideration for his pleas. Thirteen counts were dismissed and read-in, which limited his exposure at sentencing. Realistically, had Miller's counsel complained about the factual basis for a count at the time of the plea, the State would have either amended the count or simply told Miller to plead to another count, which he likely would have done. In any event, because Miller's motion did not allege sufficient material facts to show that he was prejudiced, the circuit court properly denied his claim without an evidentiary hearing. *See* ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

We turn next to Miller's request for resentencing. Again, Miller sought resentencing due to a perceived disparity between the facts of the case and the sentence he received, which he described as "clearly extreme."

A circuit court's exercise of its sentencing discretion is presumptively reasonable and our review is limited to determining whether a court erroneously exercised its discretion. ***State v. Harris***, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. At sentencing, a court must consider the gravity of the offense, the character of the defendant, and the need to protect the public. ***Id.***, ¶28.

A defendant challenging a sentence as unduly harsh must show that the sentence was "'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. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). A sentence well within the statutory maximum is presumed not to be unduly harsh. *See* ***id.***, ¶¶31-32.

We are not persuaded that the circuit court erroneously exercised its discretion and imposed a sentence that was unduly harsh in this case. The court properly considered the gravity of the offenses, Miller's character, and the need to protect the public. In doing so, it expressed particular concern with "the number of victims," as well as the harm Miller had caused them "emotionally and psychologically." This led the court to conclude that the "community's interests" required that Miller be "monitored for a very long period of time." Although Miller disagrees with this reasoning, the court's total sentence was well within the statutory maximum[4]

[4] Miller faced a maximum aggregate sentence of forty-nine and a half years of initial confinement and thirty-five years of extended supervision. *See* WIS. STAT. §§ 943.201(2)(c) (identity theft), 948.10(1)(a) (exposing genitals to a child), 948.12(1m) (possession of child pornography) and 973.01 (bifurcated sentence of imprisonment and extended supervision).

and therefore presumed not to be unduly harsh. ***Id.*** At any rate, on this record, we perceive no basis to disturb it.[5]

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals

[5] To the extent we have not addressed an argument raised by Miller on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).