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DISTRICT II

January 29, 2025

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

2024AP54-CR	State of Wisconsin v. Kate E. Graves (L.C. #2022CF622)
2024AP55-CR	State of Wisconsin v. Kate E. Graves (L.C. #2023CF99)

Before Gundrum, P.J., Grogan 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).

In these consolidated cases, Kate E. Graves appeals from judgments of conviction, an order denying her postconviction motion for sentence modification, and an order denying her motion for reconsideration of that denial. 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 For the following reasons, we affirm.

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

Graves, then seventeen years old, was charged with one felony, for identity theft, misdemeanor theft by acquisition of a credit card, and three other related misdemeanors. Those charges arose from Graves' theft of a wallet from the locker room of the YMCA where she worked as a lifeguard. She also stole the cash and bank cards from inside the wallet, and made two purchases using the stolen cards. While out on bond in the YMCA case, Graves was charged in a separate case with felony bail jumping and misdemeanor theft for stealing cash, on multiple occasions, from the Kohl's store where she then worked.

In exchange for Graves' pleas to identity theft and theft by acquisition of a credit card in the first case, and to misdemeanor theft in the second case, the State agreed to join in Graves' request that the circuit court withhold sentence and impose a two-year term of probation in both cases. The remaining charges would be dismissed and read in at sentencing. There was also a joint request that Graves be eligible for expungement should she successfully complete her probation term.

Regarding expungement, the State indicated that "if [Graves] can successfully complete [probation], then expungement would be appropriate." Graves' trial counsel then stressed to the circuit court that Graves "had just turned [seventeen] when the first case happened" and was "still [seventeen]" at sentencing. Counsel further informed the court that Graves was "enrolled ... in college classes" at the time, and had "aspirations to go into nursing."

The circuit court followed the joint recommendation, withheld sentence, and placed Graves on probation for two years. However, the court declined to order expungement. Explaining its decision, the court set forth the expungement standards in WIS. STAT. § 973.015(1m), then summarized Graves' criminal conduct in both cases before it. The court

observed that the request concerned two similar cases, each involving thefts, and that Graves' criminal conduct continued while she was on felony bond. It further noted that Graves stole cash from her second employer on multiple occasions. The court then determined that expungement would not be appropriate in these cases. "Based upon the allegations" set forth in the complaints, the court explicitly found "that society would be harmed by a special disposition in this case."

The State and Graves filed a joint postconviction motion to modify the sentences. They argued that their failure at the plea and sentencing hearing "to convey ... the importance of the possibility of expungement to Graves' professional goals of becoming a nurse when recommending that her convictions be expungable" was a new factor warranting modification. The motion set forth several positive steps Graves had taken to further her education and career goals. After holding a hearing, the circuit court denied the motion, explaining its rationale as follows:

The Court denied expungement of these offenses not because Ms. Graves would not benefit from it. She certainly would. But the Court found that society would be harmed by that special disposition.

The Court's interpretation of the expungement statute is this to be used in circumstances in which you have a youthful offender who has made a mistake, but through completion of the sentence ultimately makes up for that mistake.

In Ms. Graves' case, not only did she make an initial mistake which was a felony-level offense, but after being arrested, placed on bond, she committed another offense which in this court's mind questions the trustworthiness of Ms. Graves.

Based upon the fact that there was a subsequent event which again in this courts' mind was an offense involving trust, an offense involving her employer which put her in position to obtaining money, and again while on bond, this court found that at that time society would be harmed.

Although the parties are again appearing before the Court and asking the Court to reconsider that, the Court does not find the new factor of Ms. Graves wanting to pursue a nursing degree to be sufficient in this court's mind to alter the fact that society would be harmed if this matter were expunged.

The court therefore denied the joint motion.

Graves filed a motion to reconsider the denial of the joint motion. As a purported new factor in support of her motion, Graves presented emails exchanged during plea negotiations indicating the parties' agreement to request expungement because felony convictions may present challenges when Graves applies to colleges someday. The circuit court found the parties' plea negotiations were "not a new factor." However, the court determined that even if Graves had presented another new factor, sentence modification still was not warranted. In support of its decision, the court observed that at the plea and sentencing hearing "Graves was fully advised that the Court did not have to go along with any plea agreement reached between the parties." One such agreement was that both parties would request expungement at sentencing. The court also reiterated its concerns about Graves' "pattern" of "acting in a dishonest and criminal manner" as a basis for denying expungement. Graves appeals.

WISCONSIN STAT. § 973.015(1m)(a)1. allows the circuit court to "expunge certain criminal convictions of an offender under certain conditions if 'the court determines the person will benefit and society will not be harmed by this disposition.'" *State v. Helmbrecht*, 2017 WI App 5, ¶8, 373 Wis. 2d 203, 891 N.W.2d 412. Determining whether to authorize expungement is a sentencing issue involving the court's discretion. *State v. Matasek*, 2014 WI 27, ¶6, 353 Wis. 2d 601, 846 N.W.2d 811. We will not disturb the circuit court's discretionary decision unless discretion was erroneously exercised. *Helmbrecht*, 373 Wis. 2d 203, ¶8. We start with the presumption that the sentencing court acted reasonably; the defendant has the burden of

showing unreasonableness from the Record. *See State v. Haskins*, 139 Wis. 2d 257, 268, 407 N.W.2d 309 (Ct. App. 1987). “A circuit court properly exercises its discretion if it relies on relevant facts in the [R]ecord and applies a proper legal standard to reach a reasonable decision.” *State v. Thiel*, 2012 WI App 48, ¶6, 340 Wis. 2d 654, 813 N.W.2d 709.

Graves argues that her career goals are a new factor warranting modification of her sentences to allow for expungement. Thus, she argues, because her career goals were “overlooked at sentencing” and were “highly relevant” to the circuit court’s consideration of expungement, the court erroneously exercised its discretion in finding sentence modification unwarranted here. In a slightly separate, but closely-related, argument, Graves further argues that the court erroneously exercised its discretion in concluding that sentence modification was not warranted after being presented with the parties’ plea-negotiation emails.

A circuit court may modify a defendant’s sentence upon a showing of a new factor. *See State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. The analysis involves a two-step process. First, the defendant must demonstrate by clear and convincing evidence that a new factor exists. *Id.*, ¶36. Second, the defendant must show that the new factor justifies sentence modification. *Id.*, ¶¶37-38. Whether a new factor warrants sentence modification is a discretionary determination for the circuit court. *See id.*, ¶¶37, 66.

Even assuming, without deciding, that Graves’ career goals and the contents of the plea negotiations constitute new factors,² we conclude that the circuit court did not erroneously exercise its discretion in determining that sentence modification was not warranted here. In particular, as demonstrated by the court’s thorough remarks at the hearing on Graves’ reconsideration motion, the court had initially denied expungement because of concerns about Graves’ trustworthiness. It worried that Graves had already committed one crime of dishonesty, was caught, and was on bond, yet she continued to commit thefts through her employment. That led the court to its conclusion at sentencing that society would be harmed by allowing expungement in these cases. *See* WIS. STAT. § 973.015(1m)(a)1.

The circuit court indicated in its two postsentencing rulings that its concerns regarding Graves’ patterns of dishonest behavior remained, despite the information regarding Graves’ career goals and the plea negotiations. The court indicated that the new factors still did not entitle Graves to expungement, which, by statute, is a discretionary decision. *See* WIS. STAT. § 973.015(1m)(a)1. (stating “the court *may* order at the time of sentencing that the record be expunged upon successful completion of the sentence” (emphasis added)).

Finally, we reject Graves’ argument that “[t]he significance of this situation” in which both the defense and the State agree that expungement is warranted indicates that the circuit

² Upon our independent review of the Record, we observe, as set forth above, that the parties did inform the circuit court at sentencing that Graves had a goal of going to college to pursue a nursing degree after she completed high school. After sentencing, the parties appeared to argue that, although the court was informed of these goals at sentencing, the parties failed to impress upon the court the importance of Graves’ goals as the driving force in requesting expungement, perhaps as opposed to simply focusing on her age when she committed the thefts at issue. However, for purposes of our analysis, we assume without deciding that Graves presented “new factors” to the court in support of her expungement request.

court erroneously exercised its discretion in denying expungement. A court “may, if it appropriately exercises its discretion, reject any plea agreement that does not, in its view, serve the public interest.” *State v. Conger*, 2010 WI 56, ¶3, 325 Wis. 2d 664, 797 N.W.2d 341. As the facts above establish, Graves was aware that the court was not bound by any aspect of the plea agreement before she entered her pleas. It is clear from the court’s remarks at various junctures in these proceedings that it had substantial concerns about Graves’ trustworthiness, which is why it concluded that expungement would not serve the public interest. Graves has not persuaded us that the court’s determination was an erroneous exercise of discretion. *See id.*

For all the foregoing reasons, we conclude that the circuit court “relie[d] on relevant facts in the [R]ecord and applie[d] a proper legal standard to reach a reasonable decision.” *See Thiel*, 340 Wis. 2d 654, ¶6. We further conclude that Graves has failed to carry her burden of establishing that the court erroneously exercised its discretion in denying expungement in the first instance, nor has she met her burden of establishing an erroneous exercise of discretion in denying the motions to modify her sentence and to reconsider that denial. *See Haskins*, 139 Wis. 2d 257, 268. Therefore,

IT IS ORDERED that the judgments and orders 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.

Samuel A. Christensen
Clerk of Court of Appeals