

STATE OF WISCONSIN

SUPREME COURT

Case No. 2020AP000564-CR

FILED

JUL 01 2021

**CLERK OF SUPREME COURT
OF WISCONSIN**

STATE OF WISCONSIN,)	SUPPLEMENTAL
Plaintiff-Respondent,)	PETITION FOR REVIEW
v.)	
WADE A. HALLETT,)	Case No. 2020AP000564-CR
Defendant-Appellant-Petitioner.))	L.C. #2017CF280

Supplemental Petition for Review of a Judgment of Conviction, an Order Denying Post Conviction Relief, and an Appellate Court Affirmation, entered in Rock County Circuit Court by Judges R. Alan Bates and Derrick A. Grubb; and the Court of Appeals District IV

**BRIEF AND APPENDIX OF
DEFENDANT-APPELLANT-PETITIONER**

Dated this 28 day of JUN, 2021

Wade A. Hallett

Wade A. Hallett
Jackson Correctional Institution
P.O. Box 233
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II. STATEMENT OF ISSUES

A. Did the sentencing remarks of the trial Judge violate the principle of an individualized sentence which was the minimum necessary, for a fully articulated rationale of sentencing objectives?

YES, evidenced herein.

B. Is there an unresolved conflict between *McCleary, Daniels, Ocanas, and Gallion* concerning when a sentence is unduly harsh, as the existing Law is inadequate and requires clarity to promote the development and application of criteria for sentencing which are rational and just to prevent those which are unduly excessive in length?

YES.

III. CRITERIA FOR GRANTING REVIEW

Petitioner seeks review because this case indicates ripeness for the re-assertion of this court's controlling precedents in the face of their applied erosion, as the Appellate Court's decision was devoid of a single citation reference to precedents and relied solely on discretion, which herein was exercised contrary to this Court's precedent instructions.

IV. ARGUMENT

SUMMARY:

The applicable standards on sentencing are well established by *State v. Daniels*, 117 Wis.2d 9, 22, 343 N.W.2d 411 (Ct.App.1983); *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W. 2d 197; *McCleary v. State*, 49 Wis.2d 263, 280–81, 182 N.W.2d 512 (1971), and *Ocanas v. State*, 70 Wis. 2d 179, 233 N.W. 2d 457 (1975).

Gallion was intended to re-invigorate *McCleary* but in practice has failed to do so after 17 years. It has been 50 years since *McCleary* and therefore the time is ripe, given what has occurred here, to put some teeth in it.

Currently, the court's all too often selectively cherry-pick elements of *Gallion* and *McCleary* to buttress their decisions, while ignoring other of the 12 factors meant to be balanced as sentencing considerations.

Further recall, a *Gallion* main objective was to re-invigorate *McCleary's* calling for the minimum amount of custody necessary acknowledging "[i]n each case, the sentence imposed shall 'call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant'" (*Gallion* at ¶44)(citing *McCleary* at 276) which the *Gallion* court noted had been eroded. *Gallion* at ¶50.

The standing conflict is that nowhere within the currently applied sentencing practices is a system to identify and remedy unduly harsh sentences, other than a reviewing courts discretion which is rarely exercised. Under the current scheme, all the sentencing court needs to do is recite the magic words of 1.) protection of the public; 2.) gravity of the offense punishment; 3.) rehabilitation of the defendant, and any sentence less than the maximum seems to stand.

It is important to recall that with the transition from the Presumptive Mandatory Release (PMR) Parole "Old Law" to the Truth-In-Sentencing (TIS) "New Law" came not only a 50% across the board increase in maximum felony penalties, but also the elimination of the 1/3rd time discretionary parole and the 2/3rds time Presumptive Mandatory Release. An old law crime with a 15 year maximum sentence exposure that received a 10 year actual sentence within the presumptive guideline range, occasionally found a defendant released on discretionary parole after 3.5 years while almost all were released on PMR parole after 7 years. That same defendant today under the new law serves 10 years period. So its evermore important now that the sentence be determined fairly in the first place.

This understanding is critical because *Gallion's* minimum sentence to meet objectives came after TIS so even this minimum was now a much larger fixed sentence. Therefore, the unduly harsh sentence concern exemplified by *McCleary* has been magnified despite the unresolved

conflict it presents with *Daniels*. Where *Daniels* says the sentence is fair, *McCleary* and *Ocanas* say it is unduly harsh.

IMPROPER SENTENCING CONSIDERATIONS:

This Court's precedents illuminate that "[w]e believe that *McCleary* was and still is one of the best statements addressing how a circuit court should exercise its discretion. As we noted, (*Gallion at 26*) there has been a regrettable disconnect, however, between its principles as-stated and its principles as-applied." After 50 years of *McCleary* and 17 years of *Gallion*, too many sentencing practices are still magic words, robotic, or as in this case, built upon improper sentencing considerations and are therefore ripe for re-assertion with teeth.

Herein, the State initially recognized that "there's no doubt that the defendant has no prior criminal history" (R.196:74), but after this, sentencing went astray.

The sentencing court opined on good v.s. bad measuring of the defendant which was seriously imbalanced. Truth-be-Told, the good was largely limited to:

- A. "...he doesn't have prior criminal convictions." (App. A; R.196:102)
- B. "I have considered his military record which is, of course, positive." (App. A; R.196:103)
- C. "He described himself as a good soldier and patriot, and I'll give him that." (App. A; R.196:106)

followed by 10 transcript pages of a dressing down. (App. A; R.196:102-112).

Instead, the court articulated its imbalance and imputed the sins of civilization onto the defendant's sentence culminating as:

"I think it's fair to say that in the thousands of years of human civilization, abuse of women has been the norm rather than the exception. And that civilization as it lurches forward and backward, but hopefully always forward, as it lurches its way toward perhaps a more civilized society, people are starting to recognize the indignity that women in general, but now here today you in particular, have had to suffer and how it is that, in general, men attempt to control you, abuse you, and then blame you",..."what women in general have had to put up with for years and decades and centuries, and it is

time to stop. And the legislature has passed laws for years that we enforce, but still the message doesn't get out. So I hope that your bell that you ring today rings loud clear and long that says it stops now; and if it doesn't stop, by golly, there's a reckoning." (App. A; R.196:111).

The court made clear to all present that its sentencing of W.A.H. on 3/15/18 wasn't recorded as objectives being advanced by built sentencing components, it was rather taylored by "thousands of years" of human civilizations abuse and suffering of women by "men" and the bell was being rung "today" for it to stop or there would be a "reckoning" for which W.A.H. was about to be exemplified to pay. Anything the court said after that, attempting to mitigate what it just said, was merely saying the words to say the words, like an Attorney saying "I withdraw the question" after an objection and knowing the jury can't unhear what just transpired.

Based on the transcript, W.A.H. was not merely sentenced for the charge at-hand, but rather for a court perceived accumulation of societies abuses of women and W.A.H.'s unevidenced abuse summed up as *"for a period of over twenty years, you were physically, psychologically, verbally abusive to your family and managed to get away with it without being arrested and convicted for any of those acts. Now you've been caught. Now you'll be sentenced."* (App. A; R.196:108), despite no record evidence and only untested hearsay.

This societal accumulation of wrongs seems far astray from what ***Gallion***, ***McCleary***, and ***Ocanas*** decisions provide as instruction to ensure an individualized sentence. "Individualized sentencing, after all, has been a cornerstone to Wisconsin's criminal jurisprudence." ***Gallion*** at ¶48.

A. The Standard:

The applicable standards on sentencing are well established by ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W. 2d 197; ***McCleary v. State***, 49 Wis.2d 263, 280–81, 182 N.W.2d 512 (1971), and ***Ocanas v. State***, 70 Wis. 2d 179, 233 N.W. 2d 457 (1975).

The petitioner asserts that in this case these standards were abandoned while the court endeavored onto a sentencing that the record transcript best articulates on its own.

The Wisconsin Supreme Court in ***Gallion*** set forth the basic framework for sentencing, emphasized the need for the court to articulate its rationale for the record. ***State v. Taylor***, 2006 WI 22, ¶53, *citing Gallion*. ***Gallion*** directs that a sentence should "call for the minimum amount of custody or confinement which is consistent with the protection of the public, gravity of the offense, and rehabilitative needs of the defendant" ***Gallion*** at ¶44 (*citing McCleary v. State*, 49 Wis. 2d 263, 182 N.W. 2d 512 (1971)).

The sentencing court must not only specify the objectives of the sentence on the record, it must also describe facts relevant to the sentencing objectives and explain why the particular

component parts of the sentence imposed advance the specified objectives. *Gallion* at ¶40-43. (emphasis added).

Gallion further requires that "what has previously been satisfied with implied rationale must now be set forth on the record." *Id* at ¶38. Consequently, Appellate Courts are instructed to refrain from inferring reasoning to the sentencing court that is not explicitly stated in the record. *State v. Ziegler*, 2006 WI App. 49, ¶18-25 (citing *Gallion* at ¶4). Here the sentencing decision did not satisfy the requirements of *Gallion* and the Appeals Court decision ignores that fact.

While the sentencing court is not required to explain its sentence with mathematical precision, it was required to articulate objectives with relevant facts which explain how the sentence components advance those specified objectives, and to do so with a minimum sentence required to accomplish those objectives.

For example, with a low Compass Score of 1, Recidivism Risk of Low, and assignment of the minimum SOT-2 programming (100 hrs. < 2 years), the court was required by *Gallion* to explain why 10 years of confinement better served the advancement of the sentencing objectives (themselves unstated) than a significantly shorter confinement term more closely related to defendant's low risk scores and programming needs, like 5 years.

On this, the court was silent, simply explaining "I'm going to follow the recommendation of the district attorney" and "I'll go at the upper end of the recommendation by the state and the presentence report" citing "safety to society" and needing to be "rehabilitated" (App. A; R.196:112-113) in general.

To attempt to interpret the court's explanation requires one to infer a rationale where one was absent, contrary to the unpermitted endorsement of "implied reasoning" barred by *Gallion* at ¶4. Here the court's focus was that the sentence was much less than the available maximum while it ignored its duty to explicitly place onto the record it's reasoning for the lengthy sentence imposed compared to a 1/2 lesser, as it stated "and the family is going to be disappointed that he doesn't get the sentence that they've asked for of a maximum of forty years in prison. He's not going to." (App. A; R.196:111).

Rather than justify and build up from minimum based on stated objectives, the court started at the maximum of 40 years and came down to 10 years with 4 of extended supervision with no colloquy tying objectives to criteria which advance them with its decision.

With specificity as to protection of the public, there was little concern of consequence as the court noted "he doesn't prowl the alleys looking for victims" and he was a "public" man who was a good soldier and patriot "and i'll give him that." (App. A; R.196:106). Instead it was the home where the court's concerns were primarily articulated, a home which is now empty. Therefore, it was punishment for gravity of the offense and rehabilitative needs that were supposed to drive the sentence.

Contrary to the Appellate Court's presumption (App. B at 3, para. 1; App. Ct. 6/10/21 decision), although Counsel Olsen chose not to (to W.A.H.'s objection) the defendant **does** dispute the court's description of his history on appeal. The record is absent a single instance of "abuse", Child Protective Services (CPS) finding, or law enforcement action against W.A.H. for a 21 year period of time from 1996-2017 (while he raised his children) until this incident. There were however, multiple calls during this time period, made while the children resided alternately at the Mother's house. This evidenced that the children were not opposed or inoculated from calling authorities if they felt the need, as clearly they did. Even the single incident in 1995 involving W.A.H. having an argument with his wife was so minor and resolved that it was ultimately dismissed. (App. A; R.196:18).

W.A.H. contends that as a strict, military disciplined, stickler and taskmaster, he was resented within the home as the children grew, due to being pigeonholed into the unenviable position of "wait until your father gets home" by the other spouse who refused to parent. W.A.H. was comfortable in this role due to his military experience and leadership, but did not fully appreciate the impression that it was to leave on the children. W.A.H. acknowledges yelling at his children in response to bad behavior, as well as occasionally restraining them during outbursts and minor corporal punishment spanking for discipline, but he refutes abuse. W.A.H. certainly made his presence known and ill behavior parties uncomfortable, but notions of abuse have been planted in the children's minds due to tenuous divorce animosity during their formative teenage years.

This Court need not be schooled on the leverage and manipulations frequently employed and exercised through children during divorce, and the long-lasting impressions those leave on developing minds. This is not a new concept...but it IS real. Here that skewed history by young adults fresh out of their teen years and a divorce, with no children of their own from which to draw perspective and appreciation, has played heavily in weighing the sentencing court in a mountainous imbalance.

The Appellate Court states "[t]he standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. See *State v. Gallion*, 2004 WI 42, ¶17-51", but then never cite in their order a single reference to *Gallion* or that a sentence should "call for the minimum amount of custody or confinement which is consistent with the protection of the public, gravity of the offense, and rehabilitative needs of the defendant." *Gallion*, at ¶44 (emphasis added). Relying instead solely on discretion which W.A.H. argues was erroneously exercised herein. The Appellate Court was silent on the matter of *Gallion's* command that the courts "must explain" (*Gallion*, at 45,46,49) why 10 years confinement were needed rather than 5 to advance sentencing objectives that were never articulated.

For the Appellate Court to cite and rely on *Gallion* ¶17-51 globally (App. B at 2) for its affirmation with the glaring omissions, and imbalance regarding *Gallion's* "must" considerations and explanations which were devoid in the 3/15/18 sentencing, leaves this Court

with an unignorable duty to make clear all of **Gallion's** requirements are to balance on a level playing field, not to be cherry-picked with discretion to buttress a particular outcome.

The transcript provides reasonable and convincing evidence of improper considerations in sentencing that the Appellate Court ignored in its opinion of 6/10/21 (App. B, pg.3 para. 3) along with its not addressing Appellate Counsel Olsen's valid Brief points on **Ocanas** regarding the trial court's weight imbalance of the contravening factors to be considered. Here the imbalance was so disproportionate and out of balance that it violates the judgment of reasonable people. Contravening considerations were all but ignored.

V. CONCLUSION

W.A.H. asks this Court to re-assert the sentencing standards demanded by **Gallion, McCleary,** and **Ocanas** in Wisconsin Courts giving bite with their bark by reversing and modifying W.A.H.'s sentence to 7 years incarceration to be followed by 4 years extended supervision that would now account for the 2 years SOT-2 program onto his time already served, as remedy for the improperly included sentencing considerations that impacted the sentence herein.

Dated this 28, day of JUN, 2021

Wade A. Hallett

Wade A. Hallett

Jackson Correctional Institution

P.O. Box 233

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CERTIFICATE OF MAILING

I certify that this Supplemental Petition for Review and Appendix was deposited in the First Class U.S.P.S. mail for delivery to the Clerk of the Supreme Court on 6/28/21. I further certify that the Petition and Appendix were correctly addressed and postage was pre-paid, and mailed pursuant to Wis. Stat. 809.80(3)(b)(2)(c), and DOC DAI Policy 309.04.01(IV)(c), and *Houston v. Lack*, 487 U.S. 266 (1988), the Prison Mailbox Rule.

Wade A. Hallett

Wade A. Hallett

6/28/21

Date

FORM AND LENGTH CERTIFICATION

I certify this brief conforms with sec. 809.19 with its length being 3036 words in proportional serif font.

CERTIFICATION OF APPENDIX

I certify this brief conforms with sec. 809.19 including as to confidentiality.

Wade A. Hallett 6/28/21

APPENDIX

App. A - Excerpt of Sentencing Hearing 3/15/18	<u>APP</u>
(R.196:1,101-113	100 - 113
App. B - Appellate Court Order of Affirmation	
6/10/21	114 - 118

Record has been so reproduced
to preserve confidentiality

FILED
04-23-2018
Clerk of Circuit Court
Rock County, Wisconsin

STATE OF WISCONSIN	CIRCUIT COURT BRANCH 2	ROCK COUNTY	2017CF000280
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STATE OF WISCONSIN,	Plaintiff,		
	vs.	CASE NO. 17-CF-280	
WADE AARON HALLETT,	Defendant.		
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PROCEEDINGS:	Sentencing Hearing,		
DATE:	Thursday, March 15, 2018,		
BEFORE:	The Honorable R. ALAN BATES, Rock County Circuit Court Judge,		
APPEARANCES:	Deputy District Attorney PERRY FOLTS, appearing for the State;		
	Attorney MATTHEW LANTTA, appearing for the defendant;		
	WADE AARON HALLETT, defendant, appearing in person.		
KRISTEN L. HILL, RMR, CRR			

1 child sex offender, and this Court needs to hand down
2 a sentence that appropriately addresses the gravity of
3 the offense, the punishment that is appropriate given
4 the harm that he has done to M and, prior to that,
5 to A . This has been a pattern of behavior that
6 he has been able to successfully hide from the
7 community for over twenty years. This isn't something
8 that happened overnight. He thought about this. He
9 planned it. He set it up. And when he had the
10 opportunity, as I said earlier, he pounced. He's now
11 a convicted sex offender. A sentence in prison as I
12 recommended earlier is what is appropriate, and I
13 would ask the Court impose that.

14 THE COURT: Thank you.

15 All right. Thank you, Counsel. Thank you,
16 victims, and people who were willing to make
17 statements on behalf of Mr. Hallett. Thank you,
18 Mr. Hallett, for your statement.

19 I have had an opportunity to preside over this
20 trial for many months -- or rather, this case. I've
21 had an opportunity to review the documents on file
22 either filed by the district attorney's office or
23 filed by the defendant. I've had an opportunity to
24 review the letters submitted, the records submitted,
25 to hear the statements of the people who came here

1 today. I've had an opportunity to hear the
2 recommendation of each side. I've had an opportunity
3 to review the psychosexual risk assessment as well as
4 both presentence investigations. I'm well aware of
5 the requirements that I have to consider in
6 sentencing: protection of the public; punishment of
7 the defendant; rehabilitation of the defendant;
8 deterrence of others; restorative justice, if that is
9 possible; restitution, if that is possible. And I
10 need, in my sentence, as pointed out by Mr. Lantta, to
11 justify what I hope to accomplish by any sentence I
12 impose.

13 I've considered the past record of Mr. Hallett
14 specifically talking about criminal behavior, and he
15 doesn't have prior criminal convictions. He does have
16 the deferred prosecution program in Dane County that
17 he successfully completed and a couple of juvenile
18 matters that I don't take particularly serious; they
19 happened a long time ago.

20 I have considered the defendant's personality,
21 character, and social traits, and will talk about that
22 quite a bit in just a moment.

23 The offense is vicious and aggravated by its
24 nature. To be blunt, it's the rape of a child in the
25 protection of the adult. The defendant is certainly

1 culpable. I've considered his demeanor all through
2 the course of this case and today. I have considered
3 his age, educational background, employment record,
4 all of which are positives. I have considered his
5 military record which is, of course, positive; except,
6 of course, we have the one issue that may or may not
7 have happened as described at I believe it was Fort
8 McCoy.

9 I have considered the defendant's remorse,
10 repentance, and cooperativeness -- which we'll talk
11 about again in a moment -- the rights of the public;
12 the length of his pretrial detention, which is
13 considerable, and it was difficult pretrial detention
14 because it was over a year in a county jail with very
15 little activities for him to participate in.

16 Aggravating factors and mitigating factors
17 really don't apply here as separate items except for
18 what we're going to talk about here.

19 So where should we start to talk? Well, I'm
20 going to start by talking about the nature of the
21 offense which I have just restated in blunt language.
22 And Mr. Hallett today says he accepts responsibility
23 for what he did, and I think Mr. Folts' comment about
24 he succumbed to temptation is a fair statement of how
25 Mr. Hallett views his actions, which are much more

1 serious and much more criminal than he phrases them.

2 I'm going to start out by looking at the
3 psychosexual risk assessment prepared by Courtney
4 Endres, forensic psychology consultant and
5 evaluations. I guess I'm looking at the one dated
6 March 3rd. I think they're the same in both portions.
7 I'm on page 7, first full paragraph or second
8 paragraph.

9 This report was prepared at the request of the
10 defendant, and the report says: "Mr. Hallett clearly
11 holds some very distorted views of sexual
12 responsibility and underage consent. He seems to lack
13 an understanding of the psychological development of a
14 teenage girl and the factors that played into his
15 victim's behaviors. He made several comments that
16 suggest he believes that M seduced him or that she
17 manipulated him with sexual prowess when, in fact, she
18 is yet a still-developing teenager whose brain is not
19 fully able to make adult decisions or give sexual
20 consent. He spent a considerable portion of the
21 interview focused on M 's behaviors versus his own.
22 In the December PSI interviews with both A and
23 M , there were reports of Mr. Hallett showing
24 wholly inappropriate behaviors indicative of jealousy
25 and ownership of these girls as if they were his

1 property. He would reportedly interfere with their
2 dates with male peers and would become enraged when he
3 suspected sexual activity or another male showing
4 interest in one of them. These behaviors suggest that
5 Mr. Hallett viewed these girls as his equals in
6 ability to give sexual consent yet beneath him in
7 terms of power. However, this makes sense in
8 reviewing his marital history. According to both
9 wives, he was very controlling and abusive. Thus, it
10 seems as though he treated his stepdaughters as
11 substitute wives."

12 Well, the individual conclusions arrived at by
13 Dr. Endres in that paragraph may be subject to
14 interpretation or subject to dispute, but the overall
15 sentiment and professional finding to me is valid from
16 having reviewed this case and in preparation for today
17 and from having handled this matter for these many
18 months. Mr. Hallett clearly does hold a distorted
19 view of his sexual responsibility and what is underage
20 consent.

21 Today, Mr. Hallett, through his attorney, says
22 he accepts responsibility. If he believes that today,
23 he doesn't understand the concept of accepting
24 responsibility. All through this case, he has not
25 accepted responsibility. His plea on this case was no

1 contest. He never said guilty. He took a plea
2 agreement -- which I don't hold against him; it might
3 have been in his best interest to do so -- but
4 insisted upon not pleading guilty. I allowed him to
5 enter a no contest plea. I am not required by law to
6 allow that, but I did. So to come here today and say
7 I accept full responsibility, to me, particularly in
8 light of what Mr. Hallett had to say, is just saying
9 the words to say the words. Of the entire statement
10 that Mr. Hallett gave that might have lasted
11 fifteen minutes, he spent about two minutes regarding
12 what he did, where he succumbed to temptation, and
13 spent about ten seconds apologizing to his victims.
14 He spent the vast majority talking about what kind of
15 person he was, and what he really talked about is what
16 kind of public person he was. He described himself as
17 a good man who does good things for people. He
18 described himself as a devoted friend, father, and
19 husband. The examples he gave all were things that
20 could be seen in public. He described himself as a
21 good soldier and patriot, and I'll give him that. But
22 a number of things don't add up. One is you can't say
23 that one balances the other. Mr. Folts mentioned the
24 doctor at Michigan State University, who I'm sure did
25 many wonderful things in his life, but you can't say

1 because I did wonderful things in my life in one
2 regard, I am therefore not responsible or less
3 culpable for the awful things I did in my life. And,
4 Mr. Hallett, you did some awful things. We'll get to
5 those again in just a second. But you attempt to
6 portray yourself in a very positive manner, and
7 somehow that's supposed to offset the awful,
8 felonious, Class C felony rapes that you committed.
9 And it is plural, rapes. You pled to one count, but
10 additional counts were read in.

11 So everybody has good aspects of their
12 personality. Everybody has bad aspects of their
13 personality. Most people are in a medium range of
14 what they do, act, and think for their personality.
15 You seem to have extremes in your range. You're
16 extremely attentive and extremely nice to people who
17 aren't in your family, and you appear to be nice to
18 people who are in your family when we know that you
19 physically abused your sons and stepsons, when you
20 physically abused your daughter and stepdaughters, and
21 to get to the point, when you raped your
22 stepdaughters. The fact that you focus on your
23 positive aspects, almost entirely ignoring the
24 negative acts that you committed and the consequences
25 that those negative acts had upon the victims is

1 extremely telling to me, and what it says to me is you
2 need intensive therapy as a sex offender to understand
3 still what you did wrong, why it was wrong, why the
4 State of Wisconsin holds it as a Class C felony with a
5 maximum penalty of forty years in prison and \$100,000
6 fine.

7 Yes, I understand that the risk assessment tools
8 showed you to be low risk. Risk assessment tools are
9 very valuable and relatively new addition to the
10 criminal justice system to assist the judge in making
11 decisions about sentencing, but they do not tell the
12 judge what the judge has to do. They are simply
13 additional information. And what these risk
14 assessment tools missed is that you didn't just commit
15 sex offenses against your stepdaughters. For a period
16 of over twenty years, you were physically,
17 psychologically, verbally abusive to your family and
18 managed to get away with it without being arrested and
19 convicted for any of those acts. Now you've been
20 caught. Now you'll be sentenced. And the risk
21 assessment tools do not adequately demonstrate your
22 risk to the community. The presentence report authors
23 indicate that there's a greater risk that is indicated
24 in those risk assessment tools and why they are --
25 while they are helpful to me, I do not have to follow

1 them slavishly.

2 I want to say something to the people who have
3 come, family and friends, to support Mr. Hallett.
4 Good for you. You should support your son, your
5 friend, your family. Now is when they need you. But
6 don't be fooled. Mr. Hallett, Wade Hallett, is a
7 convicted felon, a convicted criminal, who has done
8 some awful things. You may not understand the legal
9 process. You may not understand what exactly
10 happened. Well, I'm sorry about that. But what you
11 need to understand is that Wade has now admitted, even
12 though grudgingly, that he raped his stepdaughters.
13 That has happened. That is a serious matter. We have
14 to deal with it. Punishment is important, but
15 rehabilitation is important. And it's my job to
16 figure out, okay, what is the best way for this
17 criminal justice system to help rehabilitate
18 Mr. Hallett? And sadly, what I'm saying is it's going
19 to be a long, tough road because he's going to fight
20 it tooth and nail. I wish that wasn't true, but that
21 is my belief.

22 I want to say to the victims of Mr. Hallett,
23 your family and friends, I have never had victims of
24 any crime, but particularly sexual assault crimes,
25 come to court and speak as well as you ladies have

1 today. I think it's fair to say that in the thousands
2 of years of human civilization, abuse of women has
3 been the norm rather than the exception. And that
4 civilization, as it lurches forward and backward, but
5 hopefully always forward, as it lurches its way toward
6 perhaps a more civilized society, people are starting
7 to recognize the indignity that women in general, but
8 now here today you in particular, have had to suffer
9 and how it is that, in general, men attempt to control
10 you, abuse you, and then blame you.

11 One of the things I was impressed about when
12 M was giving her statement was that she described
13 herself being groomed. She described how she was told
14 that she was loved, and she described that she was
15 given presents -- some of which were totally
16 inappropriate -- and if you look at the description of
17 what she gave us here today, she described how a pimp
18 recruits a child for sex trafficking to be in
19 prostitution. That's what Mr. Hallett, in effect,
20 did, except he made a prostitute of his own daughter,
21 and he didn't prostitute her out to other men; he kept
22 her, and one of the reports talks about he treated her
23 as a daughter-wife. She is not a daughter-wife.
24 She's a child. She's an adult today, but she was a
25 child at this time.

1 Anyway, if it was within my power, I would
2 publish your statements in the local media as a
3 manifesto of what you in particular have had to put up
4 with and what women in general have had to put up with
5 for years and decades and centuries, and it is time to
6 stop. And the legislature has passed laws for years
7 that we enforce, but still the message doesn't get
8 out. So I hope that your bell that you ring today
9 rings loud clear and long that says it stops now; and
10 if it doesn't stop, by golly, there's a reckoning.

11 Now, even though I've made that impassioned
12 statement that there will be a reckoning, I'm not
13 sentencing Mr. Hallett just because I'm mad at him.
14 I'm not sentencing him because I think some sort of
15 forward motion in the civilization of all of us has to
16 take place. I'm sentencing him because I've
17 considered the factors of fact and law that I have to
18 consider. And the family is going to be disappointed
19 that he doesn't get the sentence that they've asked
20 for of a maximum of forty years in prison. He's not
21 going to. When somebody gets the maximum penalty,
22 it's because we are saying there is no hope for that
23 human being, or that he has done it so many times by
24 prior convictions that he is unable to ever be
25 released into the community. And a forty-year

1 sentence for a fifty-two-year-old man, that's
2 basically life. I do not find that Mr. Hallett cannot
3 be rehabilitated. I hope he can. But as I said
4 earlier, it's going to be a long, hard process; and
5 he's going to go into it kicking and screaming and
6 fighting against it unless there's a major, major
7 revelation that enters into him, into his personality,
8 and into his soul that says what I have done is
9 against the law -- and both sides have talked about
10 religion here, so I'll say it -- a sin. And he has to
11 understand it, and he has to address it.

12 I'm going to follow the recommendation of the
13 district attorney. I think the only place where
14 Mr. Hallett can get his treatment that he needs is in
15 the prison system. I think there is a protection
16 issue for the public if he was released. While he
17 doesn't prowl the alleys looking for victims, he
18 creates relationships and then cultivates victims.
19 And I don't have -- might be too strong -- I'm afraid
20 that if he was released on probation, even with strict
21 supervision, even with sex offender registry, that he
22 would find a way to cultivate somebody. Until he
23 learns, understands, and is rehabilitated, I'm not
24 willing to risk that safety to society and to have
25 other victims. So the recommendation -- give me just

1 a moment here to find my sheet. There we are. And
2 I'll go at the upper end of the recommendation by the
3 State and the presentence report.

4 Total length of the sentence in this case is
5 fourteen years. The initial term of confinement is
6 ten years. The time on extended supervision is four
7 years. I will give you, Mr. Hallett, a written
8 explanation of determinate sentence. It'll explain to
9 you what extended bad time is. It will tell you that
10 you are not eligible for the Challenge Incarceration
11 or Boot Camp Program. You're not eligible for the
12 Substance Abuse Program. You do get credit for the
13 time you have served in the Rock County Jail. I
14 assume somebody has figured what the credit available
15 is?

16 MR. FOLTS: I believe it's 398 days.

17 THE COURT: Do you agree with that?

18 MR. LANTTA: I think that's correct,
19 your Honor.

20 THE COURT: I'll give 398 days credit.

21 I will advise you, Mr. Hallett, you have now
22 been convicted of a felony. That means that you
23 cannot possess a firearm for the rest of your life,
24 and what possess means is you can't own it; you can't
25 have it in your possession; it can't even be in the



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DISTRICT IV

June 10, 2021

To:

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Circuit Court Judge
Rock County Courthouse
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Janesville, WI 53545

Hon. Derrick A. Grubb
Circuit Court Judge
Rock County Courthouse
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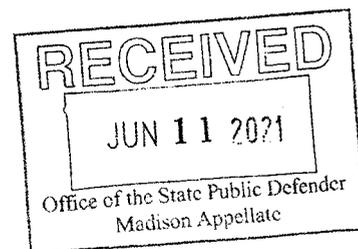
You are hereby notified that the Court has entered the following opinion and order:

2020AP564-CR

State of Wisconsin v. W.A.H. (L.C. # 2017CF280)

Before Blanchard, Kloppenburg, and Nashold, 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).



W.A.H.¹ appeals a judgment of conviction and an order denying his postconviction motion.² The issue is whether the sentencing court erroneously exercised its discretion. We conclude that it did not, and therefore we affirm. 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.

W.A.H. was convicted of one count of incest with a child by a stepparent. The court imposed a sentence of ten years of initial confinement and four years of extended supervision. W.A.H. filed a postconviction motion, which the circuit court denied.

The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis.2d 535, 678 N.W.2d 197.

W.A.H. concedes that the overall length of the sentence is appropriate, but argues that the circuit court erred in how it apportioned the sentence between initial confinement and extended supervision. He argues that the court gave too much weight to W.A.H.'s bad conduct in "private" and not enough weight to his positive accomplishments in "public" that show he is likely to succeed in rehabilitation and pose a low risk to reoffend. As a result, he argues, the court failed to impose the minimum amount of confinement time necessary to achieve its

¹ We use only the defendant's initials to preserve victim confidentiality. *See* WIS. STAT. RULE 809.86 (2019-20).

All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² The Honorable Richard A. Bates presided at sentencing. The Honorable Derrick A. Grubb denied the postconviction motion.

objectives of rehabilitation and protection of the public. W.A.H. argues five specific ways in which the court erred in weighing the factors.

First, W.A.H. argues that the court downplayed his long period of steady employment, community activity, and military service, which W.A.H. asserts “bode well for rehabilitation and compliance with the law.” The obvious problem with this argument is that W.A.H.’s own conduct history demonstrates that there is not necessarily any connection between a person’s “public” accomplishments and his or her law compliance. The circuit court noted what it described as W.A.H.’s twenty-year period of abuse of family members and that he “managed to get away with it without being arrested and convicted for any of those acts.” W.A.H. does not dispute this description of his history on appeal.

As to whether W.A.H.’s “public” accomplishments bode well for rehabilitation, he points to nothing specific in the record that suggests predictive connection between his accomplishments and rehabilitation. Furthermore, the circuit court concluded that W.A.H. would be resistant to treatment. The court reached that conclusion based on W.A.H.’s allocution that focused mainly on his positive accomplishments, on W.A.H.’s lack of willingness to take responsibility for his criminal conduct, and on his “distorted view of his sexual responsibility and what is underage consent.”

The circuit court in its discretion could reasonably decide that these specific factors are likely to have greater predictive value than W.A.H.’s general record of accomplishment in other areas of life. W.A.H.’s argument on appeal fails to establish that the sentencing court’s assessment of his rehabilitation potential was based on improper considerations or inaccurate information.

Second, W.A.H. argues that the availability of conditions for supervision and of post-confinement treatment would “force” the positive, “public” side of W.A.H. to predominate and, therefore, some of the confinement portion of his sentence can be replaced with supervision. This argument is, essentially, only speculation about the potential effect of supervision and treatment on W.A.H. Supervision and treatment are not sufficient for all offenders. For reasons we have already discussed, the circuit court articulated reasonable grounds to be skeptical about their effectiveness with W.A.H. His argument does not show that the circuit court failed to give sufficient weight to the availability of supervision and treatment.

Third, W.A.H. argues that the fact that his allocution focused on his positive accomplishments does not “necessarily” indicate a difficult process of rehabilitation, because this is a natural human response that treatment providers can address. W.A.H. may be correct that his allocution does not “necessarily” indicate difficult rehabilitation, but W.A.H. does not appear to dispute that the circuit court had a reasonable basis to think that it may indicate difficulty. W.A.H.’s argument is far from a showing that the court erred by inferring that his allocution suggests an increased possibility of resistance to rehabilitation.

Fourth, W.A.H. argues that, while it is true that his good conduct cannot be used to balance bad conduct, it is also true that his bad conduct cannot cancel out the good. The record does not show a basis to conclude that the circuit court disregarded W.A.H.’s positive conduct in fashioning a sentence using its sentencing discretion. The court imposed only ten of the available twenty-five years of initial confinement. The court specifically explained that it would not be imposing the maximum sentence because it was not finding that W.A.H. could not be rehabilitated. It appears likely that W.A.H.’s positive conduct played a role in this assessment, and in his not receiving a longer sentence.

Finally, W.A.H. argues that a more balanced weighing of his positive and negative attributes should lead to a sentence with less confinement time and more supervision. This is essentially a summation of his previous arguments, all of which we have rejected.

Upon the foregoing reasons,

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 ORDER that this summary disposition will not be published.

Sheila T. Reiff
Clerk of Court of Appeals