

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 15, 2005**

Cornelia G. Clark  
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. 2004AP3149-CR**

**Cir. Ct. No. 2003CF313**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JAMES W. WOLLER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. James Woller appeals his sentence for multiple counts of sexually assaulting children. He contends that the circuit court failed to adequately explain the rationale for its sentence. He further contends that the

court erroneously exercised its sentencing discretion and the sentence was unduly harsh and excessive. We affirm.

## BACKGROUND

¶2 In a criminal complaint filed on June 13, 2003, the State alleged that Woller, an elementary school teacher, had sexual contact with two female students. Woller asked the first victim, A.R.F., to participate in an experiment in his classroom. He blindfolded her and began touching different areas of her body with different objects and asking her to attempt to identify the items. The items included a plastic apple, cotton, and Woller’s penis. A.R.F. experienced two other incidents with Woller, with the final incident occurring at his home. Another student, R.A.S., reported that Woller conducted a similar “experiment” with her, placing his penis on her lips and tongue.

¶3 On November 26, 2003, Woller pled no contest to one count of first-degree sexual assault of a child and two counts of second-degree sexual assault of a child. Additionally, one count of first and second-degree sexual assault of a child were dismissed and read in for sentencing; an uncharged sexual assault was also read in. The court sentenced Woller to three concurrent sentences, with the greatest being twenty years’ initial confinement and twenty years’ extended supervision.

¶4 On August 23, 2004, Woller filed a motion to vacate his plea or, alternatively, requesting resentencing. An amended motion was filed on September 21. By an order dated December 3, the court denied Woller’s motion. Woller now appeals his sentence and the order denying his postconviction motion.

## DISCUSSION

¶5 Woller first contends that the court failed to adequately explain the sentence it imposed. He relies upon the sentencing transcript and our supreme court's decisions in *McCleary v. State*, 49 Wis. 2d 263, 182 N.W.2d 512 (1971), and *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. While Woller acknowledges the myriad of facts considered by the court in pronouncing sentence, Woller contends that the court did not explain how the ultimate sentence reflected the minimum amount of necessary confinement. In other words, Woller contends that the court did not explain how the facts justified twenty years of initial confinement, as opposed to some shorter term. Woller further contends that the court erroneously failed to give adequate weight to evidence supporting his good character. As a consequence, he contends that the sentence was unduly harsh and excessive. We reject Woller's arguments.

¶6 In reviewing sentences, our review is limited to determining whether the circuit court erroneously exercised its discretion. *Gallion*, 270 Wis. 2d 535, ¶17. First, the record must indicate that discretion was, in fact, exercised. *McCleary*, 49 Wis. 2d at 277. Discretion is not synonymous with decision-making, but instead contemplates a process of reasoning. *Id.* That reasoning must be discernable from the record. *See id.* How much explanation is required, however, depends on the nature of the case, but courts must at least provide a rationale for the sentence. *Gallion*, 270 Wis. 2d 535, ¶39.

¶7 As part of this explanation, courts should identify the sentencing objectives most important to the sentence. *Id.*, ¶41. Courts should also describe the facts most important to these objectives. *Id.*, ¶42. However, a sentence should

ordinarily be affirmed where the relevant facts are fairly inferable from the record. *McCleary*, 49 Wis. 2d at 281.

¶8 In cases where confinement is appropriate, courts should impose the minimum amount of confinement that is consistent with the sentencing objectives. *See Gallion*, 270 Wis. 2d 535, ¶¶44-45. However, appellate courts understand that formulating a term of confinement does not lend itself to mathematical precision. *Id.*, ¶49. As a result, no such precision is expected from a court's explanation of its sentence. *Id.*

¶9 Here, the sentencing transcript reveals that the court properly exercised its discretion in sentencing Woller. The court first concluded that Woller's poor character outweighed his positive attributes. The court stated that it had reviewed the positive references provided in letters to the court, and it noted positive aspects of Woller's past. However, the court concluded that Woller's abuse of trusted relationships, his grooming behavior, and his repeated sexual assaults of girls between twelve and fifteen years of age overcame any positive considerations.

¶10 The court also stated that its primary sentencing objective was to protect the community. Aside from the facts mentioned above, the court noted Woller's statement that he felt guilty and ashamed after each sexual assault, but still continued to engage in the behavior. Further, the court considered a doctor's report that stated Woller had made progress in understanding his behavior. It did not, however, suggest that Woller was a low risk to reoffend.

¶11 The court also expressed its objective of holding Woller accountable for his behavior and its intention to deter others from abusing their positions of

trust in similar ways. The court noted that Woller not only victimized the girls he assaulted, but also the school community and the public at large.

¶12 Despite the discretion evident from the above discussion, Woller contends that the court did not adequately explain why twenty years of initial confinement was the minimum amount of confinement necessary to accomplish the court's sentencing objectives. Woller relies upon *Gallion*, which states that the rationale for a given sentence must be stated on the record. *Gallion*, 270 Wis. 2d 535, ¶45. However, Woller seeks more explanation than is required under *Gallion*. See *id.*, ¶49.

¶13 In *Gallion*, our supreme court summarized its discussion on this issue by stating, “[i]n short, we require that the court, by reference to the relevant facts and factors, explain how the sentence's component parts promote the sentencing objectives.” *Id.*, ¶46. The court acknowledged the practical difficulty of providing a reasoned explanation for the specific parameters of a sentence, and it instructed that its requirement of a reasoned explanation was not to be a semantic trap for circuit courts. See *id.*, ¶49.

¶14 Yet, Woller seeks to use *Gallion* as just that. Woller's argument supposes that the exercise of discretion is a scientific process. His argument also implies that courts should utilize “magic words” to give the appearance that mathematical precision underlies a given sentence. However, in *Gallion*, our supreme court explicitly recognized that sentencing discretion does not lend itself to such precision. It also rejected the notion that sentencing is a game of magic words.

¶15 Here, it is apparent from the sentencing transcript that the court exercised its discretion, analyzing the relevant factors and using that analysis to

arrive at an appropriate sentence. Therefore, the *Gallion* requirement of an on-the-record explanation is satisfied and we reject Woller's claim to the contrary.<sup>1</sup>

¶16 Woller next claims that the court erroneously exercised its discretion because it gave disproportionate weight to some factors to the exclusion of others, mainly Woller's "good character." Woller maintains that this also resulted in a sentence that was unduly harsh and excessive.

¶17 The weight given to each sentencing factor is a determination left to the discretion of the sentencing court. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Here, the court made reference to the positive aspects of Woller's past and read multiple letters from his supporters. Ultimately, the court did not exclude evidence of Woller's "good character," but rather, concluded that it was outweighed by his negative behavior. The weight given to these facts was within the court's discretion. *Id.* Because the facts relied upon were neither irrelevant nor improper, the court properly exercised its discretion. *See id.*

¶18 Further, a sentence is only unduly harsh and excessive if it is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of people concerning what is right and proper under the circumstances." *Id.* (citations omitted). Woller faced up to eighty-five years' imprisonment. The court ultimately rendered three concurrent sentences, the greatest of which was twenty years' initial confinement,

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<sup>1</sup> Because Woller's sentencing complies with our supreme court's decision in *Gallion*, we do not address the State's argument that *Gallion* is not applicable because it only applies prospectively. *See State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.

followed by twenty years' extended supervision. In light of the factors considered by the circuit court and the maximum penalty faced by Woller, his sentence is not so disproportionate to the offenses committed as to shock public sentiment. *See id.* As such, the sentence was not unduly harsh or excessive.

*By the Court.*—Judgment and order affirmed.

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

