COURT OF APPEALS
DECISION
DATED AND FILED

August 08, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2149-CR **Cir. Ct. No. 2002CF3070**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TOMMY LOPEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 KESSLER, J. Tommy Lopez appeals from a judgment of conviction for second-degree sexual assault of a child, and from an order denying his motion for sentence modification. He argues that the trial court erroneously denied Lopez's: (1) presentence motion to withdraw his guilty plea; and

(2) motion to modify his sentence. We reject his arguments and affirm the judgment and order.

BACKGROUND

¶2 On June 6, 2002, Lopez was charged with second-degree sexual assault of a child who is younger than sixteen, contrary to WIS. STAT. § 948.02(2) (2001-02).[1] The complaint alleged that on August 1, 2001, the fourteen-year-old victim, Alexia S., was lying on a couch.[2] Alexia told police that Lopez, who was thirty-five years old at the time, approached her, rubbed her clothed breasts and began unfastening her shorts. Alexia said she told Lopez to stop, but he forcibly engaged in penis-to-vagina sexual intercourse with her. The complaint further alleged that Alexia became impregnated as a result of the assault, and that she also contracted a sexually transmitted disease.

¶3 Lopez waived his right to a preliminary hearing and was bound over for trial. He was released on a cash bond in early July 2002.

¶4 DNA samples from Lopez, Alexia and her newborn child were submitted for testing. The record reflects that as of June 19, 2002, the parties anticipated that they would have DNA results by August 8, 2002.

¶5 Lopez and his attorney, Michael J. Backes, appeared before the trial court for a guilty plea hearing on August 27, 2002, before the Hon. Jeffrey A.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] The complaint did not indicate whether Lopez and Alexia previously knew each other, or why they were in the same room. It was noted at subsequent proceedings that Alexia was Lopez's son's girlfriend.

Conen.[3] Backes filed a written plea questionnaire/waiver of rights form. He told the trial court that the parties had reached a plea agreement, whereby Lopez would plead guilty as charged, and both sides would be free to argue for an appropriate sentence. The State would recommend a prison sentence.

¶6 The trial court engaged Lopez in a lengthy plea colloquy. Lopez indicated that he had reviewed the guilty plea questionnaire "thoroughly" with Backes. He also acknowledged that he understood he was giving up his right to a trial, and indicated that no one had threatened him or promised him anything so that he would give up his rights. Lopez said he was "[c]ertainly" satisfied with Backes's representation.

¶7 Backes, in response to the trial court's questions about his interaction with Lopez, said that he was satisfied Lopez was entering his plea freely, voluntarily and intelligently. At no time did Lopez or Backes indicate there was any concern about proceeding with the plea.

¶8 The trial court found Lopez guilty and scheduled sentencing for October 31, 2002. A presentence investigation was ordered. Lopez remained free on bail.

¶9 On October 29, 2002, Backes filed a motion to withdraw as counsel. His affidavit stated that Lopez had contacted Backes on October 25 and told Backes that he wished to withdraw his guilty plea because Lopez "felt he had pled

[3] The names of Lopez's counsel and the trial court are provided to avoid confusion, given the number of attorneys and judges involved in this case.

guilty because your affiant had told him to do so and that, if he had not done so, the State and judge would be angry with him." Backes's affidavit further stated:

> Although your affiant took strong exception to those representations, the defendant insisted that the only reason he pled guilty was because of what your affiant had told him. Although your affiant strenuously denies these representations, your affiant does not wish for the defendant to plead guilty if he is, in fact, not guilty, or if the defendant's plea of guilty was based on any conduct of your affiant.
>
> Given the above allegations of the defendant, your affiant does not believe that he can continue to represent the defendant.

Backes also filed, on Lopez's behalf, a motion to withdraw the guilty plea.

¶10 On October 31, 2002, Backes appeared at the scheduled sentencing hearing; Lopez did not appear. A bench warrant was issued. The trial court deferred consideration of Backes's motion to withdraw as counsel, noting that if Lopez was not returned with sixty days, Backes would automatically be off the case.

¶11 Nearly nine months later, Lopez was taken into custody on the bench warrant. He appeared before the trial court *pro se* on July 31, 2003. The trial court indicated that counsel would be appointed for Lopez. Lopez told the trial court that he had previously moved to withdraw his guilty plea, and implied he still wanted to do so.

¶12 Attorney Michael P. Jakus was appointed to represent Lopez. Over the next several months, the parties appeared for several status conferences, noting that the DNA test results of Alexia's child had been delayed due to a shipping error. Jakus told the trial court that "the paternity test results are critical as to whether or not there's any reason to withdraw his guilty plea."

¶13 The parties appeared before the trial court on October 20, 2003. The State told the trial court that the results of the DNA testing indicated that it was "4.2 million times more likely that Tommy Lopez is [the child's] biological father than some other unknown, unrelated individual." Jakus told the trial court that Lopez's position was that it was actually his son who had had a sexual relationship with Alexia, and that Lopez might conduct additional testing to see if the child was Lopez's son's child.[4]

¶14 Lopez subsequently retained attorney Grace Flynn to represent him. On November 12, 2003, Lopez filed a motion to withdraw his guilty plea. The motion alleged that Lopez should be allowed to withdraw his guilty plea because he "genuinely misunderstood the consequences of his plea" because "[h]e believed he could withdraw his plea when DNA test results were returned." He asserted that he had been "confused by misleading advice from counsel, not aware of the option to wait for DNA test results to return before entering a plea or having a trial."

¶15 A hearing on Lopez's motion was conducted on February 13, 2004, before the Hon. Michael B. Brennan, who presided over all subsequent proceedings in this case. Lopez testified that when he pled guilty, it was his understanding that he was entering the guilty plea "to bide us some time" while they awaited the results of the DNA test results. He further testified that he

> was told that I needed to enter a plea, and I told [Backes] I wasn't ready to enter a plea. I told him I'm not going to

[4] It does not appear that this testing was ever conducted and there was no further discussion of whether the father of the child might be Lopez's son, rather than Lopez himself. Lopez's appellate brief states: "If a blood relative of Lopez is the biological father, this test is not conclusive." However, there is no indication that additional DNA testing has been pursued.

> plead guilty to this and what happened to the DNA. He told me it is not back yet, we did tell the State we were going to enter a plea, and if you don't, you are going to piss the DA off and he will order you to be remanded were his exact words.

¶16 Lopez said that he "really didn't have an understanding" of the plea questionnaire he completed before entering his plea, adding that Backes told him "it is a technicality, you have to fill this out, it is necessary. And, again, I was under the impression that I was still waiting for the DNA and this was another step in that direction." Lopez also testified that he did not have "any understanding" of what the plea agreement called for with respect to the State's recommendation of prison time.

¶17 Lopez testified that after entering his plea, he told another lawyer about his case and that lawyer, David Geraghty, suggested that Lopez contact Backes to discuss withdrawing the guilty plea. Geraghty also testified briefly, stating that on October 9, 2002, he had run into Lopez, whom he knew from a prior civil case, and that Lopez had told him he was concerned about having entered a guilty plea to criminal charges pending against him. Geraghty said Lopez told him he was not guilty, and Geraghty recommended Lopez talk with Backes about withdrawing the plea.

¶18 Lopez testified that he had completed high school and eighteen months of technical college. He stated that he had achieved a grade point average of about 2.5 throughout high school and technical school, although he did have some problems reading due to dyslexia. Prior to his arrest, he was working as an ironworker.

¶19 With respect to his criminal past, Lopez acknowledged that he had previously gone through a guilty plea process when he pled guilty to sexual assault

of a thirteen-year-old girl in 1988, and had served six-and-a-half years in prison for that crime.[5] He stated that he also pled guilty to armed robbery in 1985 or 1986.

¶20 Backes was not called to testify at the motion hearing. However, the trial court noted that Backes's October 2002 affidavit stated that Backes "strenuously" denied Lopez's assertions about the guilty plea hearing.

¶21 The trial court denied Lopez's motion to withdraw his guilty plea. The trial court explicitly found that Lopez "is not and was not a credible witness on the stand here today." The trial court stated:

> Mr. Lopez took the stand and recited the mantra of his reasons and recited a blanket denial. Mr. Lopez impresses the Court as savvy. He impresses the Court as intelligent.
>
> Although he does suffer from dyslexia, Mr. Lopez is not a stranger to the criminal justice system. He is an individual who, having gone through guilty pleas, has received prison terms. He is an individual who, in the Court's impression—and this is my discretion and my determination with regard to the findings of fact—came in here "playing dumb," and that, in fact, he was testifying in a pretextual way.

¶22 The trial court also acknowledged that Lopez's testimony about his plea was contradicted by the transcript of the plea hearing:

> That transcript makes quite clear Mr. Lopez's familiarity and his understanding.
>
> Judge Cohen reviews with Mr. Lopez … the crime he has been charged with, where it took place, with whom it

[5] Lopez actually entered an ***Alford*** plea to that crime. *See* ***North Carolina v. Alford***, 400 U.S. 25 (1970). An ***Alford*** plea has the same effect as a guilty or no contest plea, and "'supports a fully effective criminal judgment.'" ***State ex rel. Warren v. Schwarz***, 219 Wis. 2d 615, 631-32, 579 N.W.2d 698 (1998) (citation omitted).

> took place, the maximum possible penalties. He describes … how it is bifurcated. He explains to Mr. Lopez how he doesn't have to follow any [sentencing] recommendation. Mr. Lopez responds … "Yes sir, I understand that."

The trial court observed that throughout the plea colloquy, Lopez's answers were clear, and that Lopez even used words like "thoroughly" and "certainly" in answers to questions. The trial court found that Lopez's subsequent testimony that he did not understand the consequences of pleading guilty was "incredible," especially in light of Lopez's education, intelligence and prior experience in the criminal justice system.

¶23 The trial court found that Lopez had not established a "fair and just" reason for plea withdrawal and denied the motion. The matter was scheduled for sentencing.

¶24 At sentencing, the trial court considered the recommendations of the parties and two presentence investigation writers. The writer of the investigation report ordered by the trial court recommended a sentence of twelve-to-fifteen years of initial confinement and seven-to-ten years of extended supervision. The writer of the report prepared by the defense recommended initial confinement of eight-to-ten years and extended supervision of twelve-to-fourteen years.

¶25 The trial court sentenced Lopez to twenty years of initial confinement and ten years of extended supervision. The trial court offered detailed reasons for its sentence, discussing the severity of the offense, Lopez's character, the public's need for protection.

¶26 After sentencing, new counsel was appointed for Lopez. After delays not relevant to this appeal, Lopez retained Geraghty to represent him on appeal.

¶27 Lopez filed a motion for sentence modification. First, he argued that the passage of WIS. STAT. ch. 980 ("Chapter 980") was a "new factor" that justified a modification of sentence. He reasoned that the trial court had relied greatly on the need to protect the public when it sentenced Lopez, and asserted that if the trial court had recognized that Chapter 980 may provide protection to the public in the future, the trial court might have given Lopez a lesser sentence. Lopez also argued that the trial court erroneously exercised its discretion by imposing an excessive sentence.

¶28 The trial court denied Lopez's motion without a hearing. In its written order, the trial court stated that it was aware of Chapter 980 at the time sentence was pronounced, and that it did not believe that the existence of Chapter 980 was a relevant sentencing consideration.

¶29 The trial court also rejected the argument that it erroneously exercised its sentencing discretion when it imposed what Lopez asserted was a harsh sentence. The trial court stated:

> This Court has reviewed the sentencing transcript and entire file in detail, and finds no erroneous exercise of discretion. Given the aggravated offense[, the] severity of the defendant's crime, the defendant's poor character, and the very high risk he presents to re-offend, the Court concludes that the sentence is not unduly harsh or excessive.

This appeal followed.

DISCUSSION

¶30 Lopez presents two main arguments on appeal. First, he argues that the trial court erroneously denied his presentence motion to withdraw his guilty

plea. Next, he contends that the trial court erroneously denied his motion to modify his sentence. We examine each argument in turn.

I. Presentence plea withdrawal

¶31 "A defendant seeking to withdraw a plea of guilty or no contest before sentencing must show that there is a 'fair and just reason,' for allowing him or her to withdraw the plea." ***State v. Kivioja***, 225 Wis. 2d 271, 283, 592 N.W.2d 220 (1999) (citation omitted). A fair and just reason is "some adequate reason for defendant's change of heart … other than the desire to have a trial." ***State v. Canedy***, 161 Wis. 2d 565, 583, 469 N.W.2d 163 (1991) (internal quotation marks and citation omitted).

¶32 "The defendant bears the burden of proving a fair and just reason by a preponderance of the evidence." ***State v. Leitner***, 2001 WI App 172, ¶26, 247 Wis. 2d 195, 633 N.W.2d 207. "Whether a defendant's reason adequately explains his or her change of heart is up to the discretion of the [trial] court." ***Kivioja***, 225 Wis. 2d at 284. In considering evidence, the trial court may assess the credibility of the proffered explanation. ***Id.*** at 291. "If a trial court finds the defendant's proffered reason for plea withdrawal incredible, it may deny the motion." ***Leitner***, 247 Wis. 2d 195, ¶26.

¶33 On appeal, we review a trial court's decision to deny a defendant's motion to withdraw his guilty plea prior to sentencing using the erroneous exercise of discretion standard. ***State v. Timblin***, 2002 WI App 304, ¶20, 259 Wis. 2d 299, 657 N.W.2d 89. "Thus, we will uphold a discretionary decision if the [trial] court reached a reasonable conclusion based on the proper legal standard and a logical interpretation of the facts." ***Id.***

¶34 In his motion to the trial court, Lopez presented several reasons why he should be able to withdraw his plea. These included: (1) he was awaiting DNA results so that he could proceed to trial, and pleading guilty was just a way to buy some time; (2) his trial counsel told him to enter a plea; and (3) if he did not plead guilty, the State or the trial court would be angry with him.

¶35 The trial court unequivocally rejected these proffered reasons, concluding that Lopez's testimony was not credible and that he had not proven a genuine misunderstanding of the plea. The trial court's credibility determination is not clearly erroneous, and was an adequate basis to deny the motion. *See* ***Leitner***, 247 Wis. 2d 195, ¶26. We have reviewed the transcript of the proceedings and it is clear that the trial court "reached a reasonable conclusion based on the proper legal standard and a logical interpretation of the facts." *See* ***Timblin***, 259 Wis. 2d 299, ¶20. We discern no erroneous exercise of discretion.

¶36 Lopez argues that "it is illogical to believe that a defendant would knowingly and voluntarily enter a guilty plea to a charge when the most critical piece of evidence involved in the prosecution against him had not been disclosed, much less received." In effect, Lopez argues that he had to have misunderstood the ramifications of entering a guilty plea, or he never would have pled guilty. We disagree with Lopez's proposition that no defendant in his situation would ever plead guilty without seeing the DNA evidence. Even if Lopez were not the child's father, he could still be guilty of sexually assaulting Alexia. There are a variety of reasons that defendants plead guilty, including the desire to accept responsibility so that the trial court imposes a lesser sentence, to save the victim the necessity of testifying, and to begin rehabilitation. It is not this court's role to speculate on Lopez's motivations. The trial court rejected Lopez's assertions that he misunderstood the consequences of entering his guilty plea. Because reasonable

inferences from the evidence support that conclusion, we are bound by the trial court's credibility determinations. *See* ***Kivioja***, 225 Wis. 2d at 289-92.

¶37 Lopez also offers an entirely new reason why he should have been allowed to withdraw his plea prior to sentencing: he was not informed by trial counsel or the trial court that he could be committed as a "sexually violent person" under Chapter 980. The State urges us to reject this argument because it is raised for the first time on appeal. In his reply brief, Lopez states:

> The purpose of pointing out that no mention was made by Lopez' counsel or the trial court of a possible Chapter 980 commitment in accepting Lopez' guilty plea was not to raise a new issue on appeal as the State suggests. Lopez is now knowledgeable of the fact that such a material issue must be raised with the trial court. The purpose of addressing this point in Lopez' brief was to offer further support that Lopez was rushed through a guilty plea without proper notification of the implications or its permanency from his counsel or the court. Lopez' failure to be notified of possible Chapter 980 commitment further supports other fair and just reasons that Lopez should have been able to withdraw his plea.

¶38 We reject Lopez's argument. The effect of Chapter 980 on Lopez's decision to plead guilty was not an issue raised at the trial court. As the State observes: "Whether Lopez was aware of the possibility of a Chapter 980 commitment, whether he is credible in claiming to have been unaware and whether it is a genuine reason for wanting to withdraw his plea are factual questions." It is not appropriate for us to attempt to evaluate Lopez's assertions for the first time on appeal. *See* ***Maciolek v. City of Milwaukee Employes' Ret. Sys. Annuity & Pension Bd.***, 2006 WI 10, ¶30, 288 Wis. 2d 62, 709 N.W.2d 360 ("court will generally not consider issues raised for the first time on appeal").

II. Motion for sentence modification

¶39 Lopez challenges the denial of his motion for sentence modification on two grounds, arguing that: (1) the passage of Chapter 980 was a new factor that justified sentence modification; and (2) the trial court erroneously exercised its discretion when it imposed a thirty-year sentence, composed of twenty years of initial confinement and ten years of extended supervision.

A. New factor

¶40 A defendant seeking sentence modification based on a new factor must first show that a new factor exists. ***State v. Champion***, 2002 WI App 267, ¶4, 258 Wis. 2d 781, 654 N.W.2d 242. A "new factor" is

> a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.

Rosado v. State, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). A new factor must be "'an event or development which frustrates the purpose of the original sentence'" and must be proved by clear and convincing evidence. ***Champion***, 258 Wis. 2d 781, ¶4 (citation omitted). Whether something constitutes a new factor is a question of law we review independently. ***State v. Michels***, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989).

¶41 In its written decision denying Lopez's motion for sentence modification, the trial court explicitly rejected Lopez's argument that the existence of Chapter 980—which became effective on June 2, 1994, nearly ten years before Lopez's sentencing—was a fact unknown to the trial court at the time of sentencing. The trial court actually discussed Chapter 980 at sentencing, although

it did not discuss potential Chapter 980 commitment as a basis to impose a shorter period of initial confinement. The trial court recognized that Lopez had terminated his own sex offender treatment the last time he was imprisoned and that no Chapter 980 commitment had been imposed.

¶42 In response, Lopez states that "while this order indicates the court did consider Chapter 980, the record of the sentencing hearing substantiates the defendant's claim that this consideration was never verbalized." This statement and other similar language suggests that what Lopez is really challenging is the fact that the trial court did not explicitly discuss Chapter 980 in its possible application to Lopez, at the sentencing hearing. For instance, Lopez argues: "The trial court failed to indicate on the record at sentencing that the sanctions available under Chapter 980 were properly considered."

¶43 The trial court rejected the suggestion that it was required to consider and discuss the potential for commitment under Chapter 980, which is a collateral, rather than direct, consequence of a plea. *See* ***State v. Myers***, 199 Wis. 2d 391, 395, 544 N.W.2d 609 (Ct. App. 1996). The trial court also noted the problem with doing so: "whether or not after Mr. Lopez serves his sentence he will pose a risk necessitating civil commitment will be based on many factors and variables not within the Court's knowledge at the time it pronounces sentence." Similarly, the State argues:

> [T]he possibility of commitment under Wis. Stat. ch. 980 is uncertain and remote. It is not under control of the sentencing court, depending as it does on (1) a referral from a correctional agency when the person is about to be released from custody (Wis. Stat. § 980.02(1)), (2) the filing of a petition by the department of justice or a district attorney (Wis. Stat. § 980.02(1)(a) and (b)), and (3) the state proving all the allegations of the petition beyond a reasonable doubt at a trial (Wis. Stat. § 980.05(3)(a)). The allegations include the existence of a mental disorder and

> the requisite level of risk of reoffense at the time of release, in Lopez's case, 20 years hence. The hypothetical application of Chapter 980 to Lopez in 20 years is not a highly relevant factor that the court needed to take into account at sentencing.

¶44 We have frequently recognized that the three primary sentencing factors a trial court must consider are: (1) the gravity of the offense; (2) the character of the offender; and (3) the need for the protection of the public. *See* ***State v. Larsen***, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987). Additional factors that the trial court may take into consideration are: (1) the past record of criminal offenses; (2) any history of undesirable behavior patterns; (3) the defendant's personality, character and social traits; (4) the results of a presentence investigation; (5) the vicious or aggravated nature of the crime; (6) the degree of the defendant's culpability; (7) the defendant's demeanor at trial; (8) the defendant's age, educational background and employment record; (9) the defendant's remorse, repentance and cooperativeness; (10) the defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention. ***Id.*** at 426-27. These are denominated the secondary factors, which a sentencing court may, but is not obligated to address. *See* ***State v. Lewandowski***, 122 Wis. 2d 759, 763, 364 N.W.2d 550 (Ct. App. 1985).

¶45 Lopez asserts that a potential for commitment is relevant to the public's need for protection, the gravity of the offense and the offender's character. However, he cites no authority for the proposition that the trial court is *required* to specifically consider and discuss Chapter 980. We decline to consider his argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we decline to address issues inadequately supported by legal authority).

B. Exercise of sentencing discretion

¶46 Sentencing is vested in the trial court's discretion, and a defendant who challenges a sentence has the burden to show that it was unreasonable; it is presumed that the trial court acted reasonably. ***State v. Lechner***, 217 Wis. 2d 392, 418, 576 N.W.2d 912 (1998). This court will sustain a trial court's exercise of discretion if the conclusion reached by the trial court was one a reasonable judge could reach, even if this court or another judge might have reached a different conclusion. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). If the trial court exercises its discretion based on the appropriate factors, its sentence will not be reversed unless it 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." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶47 Lopez argues that the trial court erroneously exercised its sentencing discretion when it imposed a total term of imprisonment of thirty years, including twenty years of initial confinement and ten years of extended supervision. Lopez contends:

> The aggravated circumstances necessary for the imposition of a substantial sentence are not present in this case. The court abused its discretion when sentencing the defendant in this case. Maximum sentences are to be reserved for the more aggravated breaches of the statutes….
>
> The sentence imposed on the defendant does not reflect the minimum amount of custody which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant.

Lopez further argues that there were no "aggravating circumstances" and that "[a]lthough the crime Lopez stands convicted of is serious, there is only one victim involved in the case charged."

¶48 We are satisfied that the sentencing record establishes that the trial court properly exercised discretion in imposing sentence. The trial court considered the three primary sentencing factors. First, it considered the gravity of the offense. *See* ***Larsen***, 141 Wis. 2d at 427. The trial court stated:

> [T]he court believes this is at the top end of the aggravated range of offense severity. We have a forcible sexual assault of a 14-year-old girl. We're talking about sexual intercourse. In addition to sexual contact she became pregnant. The child was born. The victim had [C]hlamydia, a sexually-transmitted disease. It moved into a condition of pelvic inflammation disorder. It was a circumstance in which this child's physical, mental and emotional health was attacked by Mr. Lopez.

¶49 The trial court also considered Lopez's character. *See* ***id.*** It noted that Lopez had previously been convicted and imprisoned for sexual assault of a young teenage girl. It also observed that Lopez's juvenile record included an adjudication for theft and robbery where two sex allegations were read-in for sentencing purposes. It discussed at length Lopez's relationships with others, and its conclusion that Lopez "is an individual of a manipulative character."

¶50 The third primary factor the trial court considered was the public's need for protection. *See* ***id.*** The trial court found that there was a "very high" need to protect the community, in light of the previous sexual assault and the manipulative behavior. The trial court stated:

> The court has sentenced thousands of defendants and I've handled thousands of cases, and the court every time it sentences does a risk analysis. In my judgment Mr. Lopez is one of the riskiest individuals that has come before the

> court because of his poor character, because of the severity of this offense, because of his manipulative character, because of his corrections history and because of his strong denial.

¶51 Based on our review of the sentencing transcript, including the trial court's extensive discussion of the primary sentencing factors, we conclude the trial court did not erroneously exercise its discretion. We also conclude that the sentence is not "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." *See* ***Ocanas***, 70 Wis. 2d at 185. Each of the primary sentencing factors strongly supports the imposition of the maximum sentence for this selfish crime by which, to satisfy his own temporary needs, Lopez forever changed the life of both his immediate victim, the child he forced upon her and the lives of her family.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.