

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2007

David R. Schanker
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. 2006AP1659-CR

Cir. Ct. No. 2004CF6318

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER CRAIG GREVE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Christopher Craig Greve, aged sixty-two, pled no contest to three counts of sexual exploitation of a child, three counts of second-degree sexual assault of a child, and one count of attempted second-degree sexual

assault of a child. *See* WIS. STAT. §§ 948.05, 948.02(2), 939.32 (2003-04).¹ The court imposed an aggregate twenty-five year term of imprisonment. Greve now appeals from the judgment of conviction and a postconviction order denying his motion for resentencing. Greve contends that the circuit court erred: (1) by denying his motion to adjourn the sentencing proceeding; (2) by sentencing him on the basis of inaccurate information, in violation of his right to due process; (3) by failing to consider mitigating sentencing information; and (4) by imposing a sentence in excess of his life expectancy. We reject his contentions and affirm.

Background

¶2 On November 13, 2004, Greve was arrested when a Glendale police officer discovered him in a car with a semi-nude thirteen-year-old girl. Greve was eventually charged in Wisconsin with sexually assaulting three teenage girls and with attempting to assault a fourth. Greve's digital photographs of the girls' intimate parts resulted in three additional Wisconsin charges of sexual exploitation of a minor. Greve was also charged in his home state of Illinois with multiple counts of child pornography when these digital photographs were discovered on his computer.

¶3 During the pendency of the cases, Greve retained a psychologist and two sentencing consultants. Additionally, Alpha Human Services, a treatment facility for sex offenders, assessed Greve's eligibility for that program as an alternative to prison. Each of these four entities prepared reports available to the

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

circuit court at Greve's sentencing following his no contest pleas to the Wisconsin charges.

¶4 Greve's first sentencing date was adjourned from July 23, 2005, until September 22, 2005, at the State's request, to permit it to investigate additional allegations concerning other underage victims that surfaced in Greve's reports. On September 21, the State filed materials relating to its supplemental investigation. At the same time, it filed a presentence report prepared by Illinois Probation Services in preparation for Greve's sentencing on the Illinois child pornography charges.

¶5 Greve moved to adjourn the September 22, 2005 sentencing proceeding, based on the State's late submission of materials. The court denied Greve's motion, but determined that it would disregard both the Illinois presentence report and the State's supplemental investigative reports. The court deemed the submissions filed too late for consideration and cumulative to information already in the record.

¶6 The court rejected probation with treatment at Alpha Human Services as offering insufficient punishment and entailing too high of a risk. The court instead imposed fifteen years of initial confinement and ten years of extended supervision as to one count of second-degree sexual assault of a child. The court imposed concurrent bifurcated sentences of the same or lesser length on the remaining six counts.

¶7 Greve brought a postconviction motion for resentencing, which the court denied without a hearing. This appeal followed.

Discussion

¶8 We begin with Greve’s contention that the circuit court erred by denying his request for a continuance of the sentencing proceeding. He faults the court for not adjourning the proceeding in order to review the presentence report prepared by the Illinois probation department.² We are not persuaded.

¶9 “[T]he decision to grant or deny a continuance is a matter within the discretion of the trial court.” *State v. Fink*, 195 Wis. 2d 330, 338, 536 N.W.2d 401 (Ct. App. 1995). There is no set test for determining whether the court erroneously exercised its discretion in this regard. *State v. Anastas*, 107 Wis. 2d 270, 273, 320 N.W.2d 15 (Ct. App. 1982). “When we review a discretionary decision, we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach.” *See State v. Wanta*, 224 Wis. 2d 679, 689, 592 N.W.2d 645 (Ct. App. 1999).

¶10 The circuit court determined from its partial review that the Illinois presentence report was largely cumulative of information previously presented. The defense described the report as “confirming the private presentence findings that we’ve already provided to this court.” Therefore, the court concluded that the report did not merit rescheduling the sentencing procedure. This comfortably

² Greve’s request to the circuit court for an adjournment rested on his need to review the Illinois presentence report. On appeal, he asserts that the trial court should have continued the hearing to allow its own review of the report. Generally, a party appealing on a different ground from that originally raised has waived the argument. *State v. DeRango*, 229 Wis. 2d 1, 10, 599 N.W.2d 27 (Ct. App. 1999), *aff’d*, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833. The State, however, has not raised waiver as a ground for sustaining the court’s decision and we choose to address the merits.

demonstrates an appropriate exercise of discretion; a circuit court's ultimate decision to deny a continuance does not warrant "probing appellate scrutiny." *Fink*, 195 Wis. 2d at 338-39.

¶11 We look next at Greve's complaint that he was sentenced on the basis of inaccurate information because the court did not comment on the findings of his presentence investigators or explain why their conclusions were inapplicable. We consider here as well Greve's assertion that the court misunderstood the extent of his admissions to prior contacts with underage girls.

¶12 In order to succeed in a claim that he was sentenced on the basis of inaccurate information, Greve must show that the trial court was presented with inaccurate information and that the court relied on it at sentencing. *State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. Greve does not satisfy his burden here.

¶13 As to the court's treatment of the privately-commissioned presentence reports, Greve's complaint in substance is that the court was presented with information that it rejected. The court was entitled to do so.

¶14 The court need not comment on every submission it receives nor explain why its sentence differs from any particular recommendation. *See State v. Johnson*, 158 Wis. 2d 458, 469, 463 N.W.2d 352 (Ct. App. 1990). Rather, the court is allowed to determine and discuss the factors relevant to each case. *State v. Echols*, 175 Wis. 2d 653, 683, 499 N.W.2d 631 (1993). Here, the court stated that it had read and considered the reports "at least twice"; it both cited and quoted components of Greve's submissions at some length. Although the court did not select or assess all of the factors as Greve would have preferred, this does not demonstrate that the sentence was imposed on inaccurate information.

¶15 Greve additionally takes issue with the circuit court’s reference to “sexual contact with young girls, up to 200 young girls.” He believes this shows that the court erroneously found his sexual misconduct with underage girls to be more extensive than the record supports. We agree with the State that this was no more than a misstatement.

¶16 Shortly after its reference to “200 young girls,” the court read aloud from a report submitted by the defense: “[e]ight of the girls were under seventeen. A total of four of these underage girls are the victims in this case.” Thus, the court misspoke in referring to 200 “young girls,” but its later references to the details of Greve’s admissions reflect that it did not misunderstand. The slip does not support Greve’s motion for relief from his sentence. “[A] sentencing proceeding is ‘not a game,’ in which ‘a misstatement by the trial judge would result in a windfall to the defendant.’” *State v. Kleven*, 2005 WI App 66, ¶14, 280 Wis. 2d 468, 696 N.W. 2d 226 (citation omitted).

¶17 We turn to Greve’s contention that the circuit court erroneously exercised its discretion at sentencing by improperly rejecting mitigating information and by imposing a sentence in excess of his life expectancy. Greve is incorrect.

¶18 Our standard of review is deferential. We will affirm a sentence “if the facts of record indicate that the trial court ‘engaged in a process of reasoning based on legally relevant factors.’” *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695 (citation omitted). We presume that the circuit court acted reasonably, and the defendant must show that the court relied upon an unreasonable or unjustifiable basis for its sentence. *State v. Gallion*, 2004 WI 42, ¶¶17-18, 270 Wis. 2d 535, 678 N.W.2d 197.

¶19 To properly exercise its discretion, a sentencing court must provide a rational and explainable basis for the sentence. *Id.*, ¶39. It must specify the objectives of the sentence on the record, which “include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, ¶40. It must identify the general objectives of greatest importance, which may vary from case to case. *Id.*, ¶41.

¶20 The court must also describe the facts relevant to the sentencing objectives and explain, in light of these facts, “why the particular component parts of the sentence imposed advance the specific objectives.” *Id.*, ¶42. Similarly, it must “identify the factors that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence[d] the [sentencing] decision.” *Id.*, ¶43.

¶21 Greve complains that the court viewed him as at high risk to reoffend when he had in fact been admitted to Alpha, a program with an 89% success rate. Greve acknowledges that information confirming the Alpha program’s success rate is missing from the appellate record. Generally, we will not consider assertions of fact that are not demonstrated to be part of the record on appeal. *Nelson v. Schreiner*, 161 Wis. 2d 798, 804, 469 N.W.2d 214 (Ct. App. 1991). Here, however, while the record on appeal omits confirming documentation, it contains Greve’s arguments regarding Alpha’s success rate. During his request to be evaluated at Alpha, Greve pointed out that “eighty-six percent of the people who complete the program are never involved in criminal activity again.” The sentencing transcript similarly contains his reference to Alpha’s high success rate. We therefore consider his argument on the merits.

¶22 The court rejected probation with treatment at Alpha Human Services, not because the treatment could not work, but because it did not eliminate the risk that Greve would reoffend and it did not provide sufficient punishment. Protecting the community and punishing the defendant are both proper sentencing objectives. *Gallion*, 270 Wis. 2d 535, ¶40.

¶23 As to risk, the court expressed concern that Greve’s submissions lacked a promise that he would be among the successful participants.³ The court noted that it had read the reports and they offered no assurance that the program would solve his problem. Greve’s deviant behavior was longstanding, and reflected “lifelong characteristics” that the court deemed both “striking” and “worrisome.” Greve’s experts concluded that as he stood before the court, Greve posed a 60-70% risk of reoffending. “A sentencing court is not required to look into the future; it is only required to consider the ‘facts that are of record or that are reasonably derived by inference from the record.’” *State v. Bizzle*, 222 Wis. 2d 100, 107, 585 N.W.2d 899 (Ct. App. 1998) (citation omitted).

¶24 As to punishment, the court concluded that the offenses warranted more than Alpha would provide. The victims were poor and young, and Greve abused a position of trust to manipulate and pressure them. The nature of the crime and the degree of culpability are appropriate factors for consideration at sentencing. *Harris v. State*, 75 Wis. 2d 513, 519-20, 750 N.W.2d 7, (1977).

³ Greve suggests that he was not permitted to present testimony from Alpha representatives at his sentencing. The record does not support the inference. When scheduling the adjourned sentencing date, the court stated that it was up to defense counsel as to whether the experts were present. In response to counsel’s specific inquiry regarding telephone availability, the court responded that “if I want to call him or you want to clarify something, I’ll gladly call him and he can make a statement.”

¶25 The court did not overlook the mitigating factors present: it expressly considered Greve’s age, health, work history, acceptance of responsibility and family support. These mitigating factors, however, did not outweigh other concerns. The court explained at length that prison was necessary in light of Greve’s multiple offenses perpetrated over a long period of time. It found the gravity of the offenses further heightened by the planning and traveling required. In sum, the court provided a “rational and explainable basis” for the sentence imposed. *Gallion*, 270 Wis. 2d 535, ¶39 (citation omitted).

¶26 Greve’s final contention is that the circuit court’s sentence extended beyond his presumptive life expectancy and is therefore contrary to law and to the court’s own intentions. We disagree.

¶27 A defendant’s life expectancy need not be considered by the circuit court. *State v. Stenzel*, 2004 WI App 181, ¶20, 276 Wis. 2d 224, 688 N.W.2d 20. As *Stenzel* makes explicit, the weight to be attached to an elderly defendant’s age remains within the wide discretion of the circuit court. *Id.*, ¶16. Here, the court considered the traumatic effect of prison on a man in his sixties and it noted that Greve’s sentence included less confinement than a younger defendant might have received under the same circumstances. Nevertheless, the court imposed prison based on the aggravating circumstances and Greve’s risk to reoffend. The court thus appropriately linked the disposition to the sentencing objectives. *See id.*

¶28 Greve nonetheless argues that the court imposed a life sentence that it did not intend. In support, he seizes on the court’s remark: “[t]here’s enough years here ... that I could send him to prison the rest of his life. And most likely he would die in prison. I don’t think that is appropriate.”

¶29 The court had an opportunity to clarify its remarks further in the postconviction order. See *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). There, the court explained that while Greve faced a potential 177½ years of imprisonment, it had selected a shorter sentence, one proportionate to the specific crimes committed. The court thus “navigate[d] the fine line between what is clearly too much time behind bars and what may not be enough.” See *Stenzel*, 276 Wis. 2d 224, ¶23 (citation omitted).

¶30 The court imposed a sentence well below the maximum Greve faced. A sentence well within the limits of the maximum is unlikely to be unduly harsh or unconscionable. *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. Sexual abuse of children is viewed by our society as one of the most heinous crimes a person can commit. See *Johnson v. Rogers Mem’l Hosp. Inc.*, 2005 WI 114, ¶80, 283 Wis. 2d 384, 700 N.W.2d 27. (Prosser, J., concurring). The sentence here does not shock the public sentiment.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

