

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 13, 2008

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. 2008AP334-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2006CF443

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN K. LEFFLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
LINDA M. VAN DE WATER, Judge. *Affirmed.*

¶1 NEUBAUER, J.¹ John K. Leffler appeals from that portion of his judgment of conviction requiring him to register as a sex offender pursuant to WIS. STAT. § 973.048(1m). Leffler contends that the trial court erroneously exercised

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

its discretion when it failed to state the reasons underlying its determination that registration was necessary to protect the public. We reject Leffler's argument. We conclude that the trial court properly exercised its discretion and affirm the judgment.

¶2 Leffler pled guilty to and was convicted of five misdemeanors: fourth-degree sexual assault of a child contrary to WIS. STAT. § 940.225(3m); two counts of exposing genitals to a child contrary to WIS. STAT. § 948.10(1); and two counts of sex with a child age sixteen or older contrary to WIS. STAT. § 948.09. Leffler's convictions stemmed from sexual contact with his then girlfriend's sixteen-year-old daughter. The trial court sentenced Leffler to four years of probation, concurrent, on each count. As a condition of probation, Leffler was ordered to register as a sex offender under WIS. STAT. § 973.048(1m).

¶3 Pursuant to WIS. STAT. § 973.048(1m), if a person is convicted under WIS. STAT. ch. 940, 944 or 948, the court may require that person to comply with the sex offender registration reporting requirements under WIS. STAT. § 301.45 "if the court determines that the underlying conduct was sexually motivated, as defined in [WIS. STAT. §] 980.01(5), and that it would be in the interest of public protection to have the person report under s. 301.45." The court orders sex offender registration under this part of the statute "in the exercise of [its] sentencing discretion." *State v. Martel*, 2003 WI 70, ¶16, 262 Wis. 2d 483, 664 N.W.2d 69.

¶4 We review a trial court's discretionary decision under the erroneous exercise of discretion standard. *State v. Kivioja*, 225 Wis. 2d 271, 284, 592 N.W.2d 220 (1999). Thus, we will uphold a discretionary decision if the circuit

court reached a reasonable conclusion based on the proper legal standard and a logical interpretation of the facts. *Id.*

¶5 Leffler contends that the trial court failed to satisfy the second prong of WIS. STAT. § 973.048(1m), which requires the court to determine that it would be in the interest of public protection to have him report.² Factors that might be considered by the court in determining whether it would be in the interest of public protection to have the person report under WIS. STAT. § 301.45 are set forth in § 973.048(3):

- (a) The ages, at the time of the violation, of the person and the victim of the violation.
- (b) The relationship between the person and the victim of the violation.
- (c) Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.
- (d) Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.
- (e) The probability that the person will commit other violations in the future.
- (f) Any other factor that the court determines may be relevant to the particular case.

¶6 At the sentencing hearing, the State requested that Leffler be required to register as a sex offender. Leffler's counsel opposed the request, arguing that it was an isolated incident, Leffler had no prior history of contact with

² Leffler does not raise any argument as to the first prong of WIS. STAT. § 973.048(1m), which requires a determination that the conduct underlying the offense was sexually motivated.

individuals of that age, no force was used, and that the probation program would provide adequate oversight of Leffler and protection to the public.

¶7 In reaching its decision, the trial court first noted that Leffler did not have a prior record, “took responsibility, entered a plea in this matter, didn’t put the victim through a trial” and appeared remorseful. The court went on to observe the seriousness of the offense based on the original charge of child enticement, a Class D felony which exposed Leffler to twenty five years in prison, and the predatory nature of Leffler’s actions.

¶8 The trial court then discussed the specifics of Leffler’s actions as they pertained to his character, the victim, the seriousness of the offense and the need to protect the public. We cite this portion of the trial court’s decision at length because it goes to the heart of Leffler’s complaint on appeal. The trial court stated:

[Y]ou’re still in denial, you’re still rationalizing, you’re still blaming her, you’re twisting the facts that somehow she enticed you. She’s a minor. She’s in her own home. She can’t escape because you’re in her position of authority. Her mother trusted you to watch her, to take care of her, to protect her, and you preyed upon her.... You’re more than twice her age.... She’s the daughter of the woman that you’re dating. You violated her trust in her own home Not one time. At least five times.

[Y]ou were kissing her and doing things and telling her not to tell anyone and more or less threatening her that you’d go to jail, that you’d get in trouble, you’d lose your job.... She’ll have to deal with that for the rest of her life and the trust issues as will her mother.

You knew it was wrong. You obviously knew it was illegal. You told her you would go to jail for it. But did it stop you? No. You escalated your behavior....

You even took her to church and came home and had sexual contact with her and had oral sex.... That speaks volumes about your character as well as whether or not you

are a threat or a danger to the community and to the public. I consider you predatory. I consider you to be a danger. You sought out this girl by making sure you were taking her to church and watching over her and all the while pretending nothing happened in front of her mother.... You're no different than somebody stalking a girl on a playground.... You were in that position of trust and power and you abused it.

The Court believes that ... you obviously need sex offender treatment. You need to be monitored on probation. You need some punishment to deter others, to [deter] you from doing it again. And the Court believes it is appropriate to put you on the Sex Offender Registry because I do consider your behavior predatory and a danger to the community, to the public, to this girl, and to others.

Leffler claims that, in reaching its decision, the trial court failed to adequately explain why he posed a danger to the public. Based on our review of the trial court's ruling, we disagree.

¶9 In reaching its decision regarding sex offender registration, the court considered Leffler's age, thirty-three, and that of the victim, sixteen, at the time of the offense; Leffler's relationship with and access to the victim as her mother's boyfriend and an adult presence in the victim's home; his instruction to the victim not to tell her mother; and his evident understanding that his behavior was illegal. The court found that Leffler's behavior was predatory in nature, a conclusion supporting a determination that sex offender registration would be in the interest of public protection.

¶10 Leffler complains that the trial court did not adequately address a psychological evaluation that he submitted to the court and that "it is difficult to determine whether the court gave any weight to any positive factors." However, WIS. STAT. § 978.043(1m) requires only a determination that sex offender

registration is in the interest of public protection. The facts surrounding Leffler's offense led the trial court to determine that it was.

¶11 We conclude that the trial court applied the proper legal standard and reached a reasonable conclusion based on the facts presented. We therefore uphold the trial court's discretionary decision and affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

