

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 29, 2002**

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. 01-1128-CR**

**Cir. Ct. No. 97-CF-73**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DENNIS GUTKNECHT,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Buffalo County: ROBERT W. WING, Judge. *Affirmed.*

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

¶1 PER CURIAM. Dennis Gutknecht appeals a judgment convicting him of four counts of disorderly conduct and two counts of second-degree sexual assault of a child, contrary to WIS. STAT. §§ 947.01 and 948.02(2) respectively. He additionally appeals the denial of his motion for postconviction relief.

Gutknecht argues that the circuit court misused its sentencing discretion. We reject Gutknecht's argument and affirm the judgment and order.

### **BACKGROUND**

¶2 In February 1999, Gutknecht was convicted upon a jury's verdict of two counts of second-degree sexual assault of a child and four counts of disorderly conduct. The circuit court imposed concurrent ninety-day jail terms on Gutknecht's disorderly conduct convictions. With respect to the convictions for second-degree sexual assault of a child, the circuit court withheld sentence and placed Gutknecht on probation for concurrent five-year terms. Among the conditions of his probation, Gutknecht was ordered to serve one year in jail and successfully complete a sex offender treatment program.

¶3 In July of 2000, Gutknecht's probation was revoked for his failure to successfully complete the sex offender treatment program. Specifically, Gutknecht continued to deny that he had committed the crimes for which he was convicted. After this court denied Gutknecht's motion to extend the time for filing a postconviction motion, he proceeded to sentencing after revocation. The circuit court sentenced Gutknecht to concurrent six-year prison terms on the convictions for second-degree sexual assault of a child. Gutknecht's motion for postconviction relief was denied and this appeal followed.

### **ANALYSIS**

¶4 Gutknecht argues that the circuit court misused its sentencing discretion. Specifically, Gutknecht emphasizes the disparity between his original

sentence and the sentence imposed after revocation to argue that the latter is unduly harsh.<sup>1</sup>

¶5 Sentencing lies within the discretion of the circuit court. *See State v. Echols*, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). In reviewing a sentence, this court is limited to determining whether there was an erroneous exercise of discretion. *See id.* There is a strong public policy against interfering with the sentencing discretion of the circuit court, and sentences are afforded the presumption that the circuit court acted reasonably. *See id.* at 681-82.

¶6 If the record contains evidence that the circuit court properly exercised its discretion, we must affirm. *See State v. Cooper*, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983). Proper sentencing discretion is demonstrated if the record shows that the court “examined the facts and stated its reasons for the sentence imposed, ‘using a demonstrated rational process.’” *State v. Spears*, 147 Wis. 2d 429, 447, 433 N.W.2d 595 (Ct. App. 1988) (citation omitted). “To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record.” *Cooper*, 117 Wis. 2d at 40.

¶7 The three primary factors that a sentencing court must address are: (1) the gravity of the offense; (2) the character and rehabilitative needs of the

---

<sup>1</sup> Gutknecht intimates that his probation should not have been revoked “for maintaining his right against self-incrimination.” In *State v. Carrizales*, 191 Wis. 2d 85, 89, 528 N.W.2d 29 (Ct. App. 1995), this court concluded that where a defendant’s admission of guilt would not incriminate him in a future criminal proceeding, the defendant’s Fifth Amendment right against self-incrimination was not violated because his sex offender treatment program required that he admit committing the sexual assault. Therefore, as Gutknecht concedes, this court’s review is limited to whether the circuit court properly exercised its sentencing discretion when it sentenced Gutknecht after probation revocation. In any event, Gutknecht did not appeal the order revoking his probation.

offender; and (3) the need for protection of the public. *See State v. Sarabia*, 118 Wis. 2d 655, 673, 348 N.W.2d 527 (1984). The weight to be given each of the primary factors is within the discretion of the sentencing court and the sentence may be based on any or all of the three primary factors after all relevant factors have been considered. *See State v. Wickstrom*, 118 Wis. 2d 339, 355, 348 N.W.2d 183 (Ct. App. 1984). When a defendant argues that his or her sentence is unduly harsh or excessive, we will hold that the sentencing court erroneously exercised its discretion “only where the sentence 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).

¶8 Here, Gutknecht contends that “[i]f the original sentence was sufficient to satisfy the three primary factors that a [sentencing] court considers, and the only new circumstance before the court was [Gutknecht]’s failure to admit his guilt, ... going from a community-based sentence to one of considerable length in the Wisconsin State Prison system seems unduly harsh and would shock public sentiment.” We are not persuaded.

¶9 Here, the circuit court considered the seriousness of the offenses and noted the need for an offender to accept responsibility for his actions in order to move forward with rehabilitation. To that end, the circuit court found that Gutknecht had done almost nothing to rehabilitate himself during the time he had already spent on probation. Emphasizing Gutknecht’s ability to direct his energy everywhere except at his rehabilitation, the circuit court acknowledged that Gutknecht had engaged in certain harassing conduct toward the victims, witnesses, jurors and officers of the court. The circuit court considered the presentence investigation recommendation of six to nine years’ imprisonment and ultimately

sentenced Gutknecht to concurrent six-year prison terms out of a maximum possible twenty years. Under these circumstances, it cannot reasonably be argued that Gutknecht's sentence is so excessive as to shock public sentiment. *See id.* at 185. Because the circuit court properly exercised its sentencing discretion, we affirm.

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

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

