

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 3, 2009

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. 2009AP415-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2007CM123

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH E. SHEPSKI, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Vilas County: NEAL A. NIELSEN, III, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Kenneth Shepski, Jr., appeals a judgment of conviction for two counts of sexual intercourse with a child age sixteen or older

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

and an order denying his motion for sentence modification. Shepski argues the circuit court erroneously exercised its discretion when it required him to register with the Wisconsin Sex Offender Registry as part of his sentence. We affirm.

BACKGROUND

¶2 Shepski pled no contest to two counts of sexual intercourse with a child age sixteen or older. At the time of the violation, Shepski was thirty-six. His victim, a neighbor who babysat his children for several years before the assault, was seventeen. At Shepski's sentencing, the court observed Shepski exhibited "terrible judgment ... [without] a lot of respect or consideration for what [his victim] will have to deal with when it's over." It also concluded his behavior contained elements of coercion, such as providing alcohol to his victim prior to the assaults and initiating and directing the terms of the relationship. The court then held it would be in the interest of public protection for Shepski to register with the Wisconsin Sex Offender Registry. It stated:

[T]he fact that this kind of conduct could happen with someone half your age, while you were in a marital relationship, while you had kids, and everything to lose, tells me that there is a fair degree of motivation to engage in [this conduct]. And that it maybe, and probably was the result of disordered thinking. And if that's the case, I don't know that the public can have assurance that that type of thinking is going to be successfully resolved simply by ordering you to counseling. And I think the registration requirement does have an interest in public protection in this situation.

¶3 Shepski filed a postconviction motion, requesting the court modify his sentence to eliminate the registry requirement. Shepski argued there was no evidence it would be in the interest of public protection for him to register as a sex offender. Specifically, Shepski pointed to the court's observation it did not

believe Shepski was a pedophile and its acknowledgment he had no prior convictions.

¶4 The court denied his motion. It clarified that while it “didn’t believe that [Shepski’s] sexual contact with [the victim] was particularly deviant from the standpoint of pedophilia,” the court “certainly did not intend to indicate ... the contact that took place here [was not] extraordinarily problematic.”

DISCUSSION

¶5 The only issue on appeal is whether the court erred by requiring Shepski to register as a sex offender. A court’s decision to require a defendant convicted of sexual intercourse with a minor age sixteen or older to register is discretionary. *See* WIS. STAT. § 973.048(1m). We will uphold a circuit court’s discretionary determination “if the circuit court reached a reasonable conclusion based on the proper legal standard and a logical interpretation of the facts.” *State v. Kivioja*, 225 Wis. 2d 271, 284, 592 N.W.2d 220 (1999).

¶6 A circuit court may order a defendant convicted of certain sexually motivated crimes to register as a sex offender if the court determines: (1) the underlying conduct was sexually motivated; and (2) “it would be in the interest of public protection to have the person report.” WIS. STAT. § 973.048(1m). Shepski does not dispute his underlying conduct was sexually motivated. His sole argument is that there was no evidence to support the court’s conclusion his registration was in the interest of public protection. We disagree.

¶7 WISCONSIN STAT. § 973.048(3) enumerates several factors courts may consider when determining whether it is in the interest of public protection for the defendant to register as a sex offender. Among other things, courts may

consider the ages of the defendant and the victim at the time of the violation, the relationship between the defendant and the victim, the probability the defendant will commit other violations, and any other factor the court determines may be relevant. WIS. STAT. § 973.048(3).

¶8 The court considered the relevant factors here. It observed Shepski was more than twice his victim's age at the time of the violation; he was married and had children of his own; and his victim had been his children's babysitter. It concluded there were elements of coercion in Shepski's behavior, pointing out that he provided alcohol to the victim, initiated and directed the terms of the relationship, and admonished the victim not to tell anyone about it. The court stated his conduct evinced "hallmarks ... of a relationship with some grooming aspects involved." It further opined Shepski exhibited "a fair degree of motivation to engage in [unacceptable sexual conduct]," and that it was not convinced the public could be assured his problem would be resolved simply by attending counseling. These findings amply support the court's conclusion Shepski's registration would be in the interest of public protection.

By the Court.—Judgment and order affirmed.

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

