

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 2010

A. John Voelker
Acting 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. 2009AP3181-CR

Cir. Ct. No. 2009CF2592

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ARAMIS MATTHEW SIMMONS,

DEFENDANT-APPELLANT.

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

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Aramis Matthew Simmons appeals from a judgment of conviction, entered upon his guilty plea, for one count of

second-degree sexual assault of a child. *See* WIS. STAT. § 948.02(2) (2007-08).¹ He also appeals from the order denying his motion for sentence modification. The only issue he presents on appeal is whether the circuit court erroneously exercised its sentencing discretion. We affirm.

BACKGROUND

¶2 Simmons was twenty years old when he had sexual intercourse with a thirteen-year-old girl. The State charged him with one count of second-degree sexual assault of a child. Pursuant to a plea agreement, Simmons pled guilty as charged. At sentencing, the State recommended that the circuit court impose a six-year term of imprisonment, bifurcated as four years of initial confinement and two years of extended supervision. The State further recommended that the circuit court stay the sentence and place Simmons on probation for three years. Simmons joined the State's request for probation.

¶3 The circuit court agreed that probation was the appropriate disposition. The circuit court imposed and stayed a five-year term of imprisonment, bifurcated as two years of initial confinement and three years of extended supervision. The circuit court placed Simmons on probation for five years with the condition that he serve six months in jail.² Simmons moved for

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² We caution appellate counsel that we view with grave concern her representations that the circuit court "rejected [Simmons's] request for probation," and that the circuit court imposed "one more year of prison time" than the State requested. These contentions can most kindly be described as distortions of the record. A less generous description might apply.

sentence modification. The circuit court denied the motion, and this appeal followed.

DISCUSSION

¶4 Our standard of review is well-settled. Sentencing lies within the circuit court’s discretion, and appellate review is limited to considering whether discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We will uphold a discretionary decision if “the circuit court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *State v. Jenkins*, 2007 WI 96, ¶30, 303 Wis. 2d 157, 736 N.W.2d 24 (citation omitted).

¶5 The circuit court must consider the primary sentencing factors of “the gravity of the offense, the character of the defendant, and the need to protect the public.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of additional factors concerning the defendant, the offense, and the community. *See Gallion*, 270 Wis. 2d 535, ¶43 & n.11. “When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence.” *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. We defer to the circuit court’s “great advantage in considering the relevant factors and the demeanor of the defendant.” *See State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

¶6 The circuit court must “specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and

deterrence to others.” *Gallion*, 270 Wis.2d 535, ¶40. The circuit court must explain how the sentence imposed advances the objectives of the sentence. *Id.*, ¶42. We recognize, however, that the amount of explanation required for a sentencing decision varies from case to case. *Id.*, ¶39.

¶7 Simmons argues that the circuit court did not comply with its sentencing obligations. The record does not support his position.

¶8 Simmons suggests that the circuit court should have taken into account that the victim “wanted to have intercourse with him.” Additionally, he emphasizes that the assault did not lead to a pregnancy and that the victim did not develop a sexually-transmitted disease. The record reflects, however, that the circuit court fully considered the circumstances of the crime when discussing the seriousness of the offense. The circuit court expressly acknowledged that Simmons used a condom and that the victim cooperated in the sexual conduct, but the circuit court reminded Simmons that “there’s a reason that children shouldn’t have sex,” and that his victim was “too young to understand [the consequences] whereas [Simmons] know[s] better.”

¶9 We reject the contention that the circuit court gave inadequate consideration to Simmons’s character. To the contrary, the circuit court pointed out that Simmons had not completed high school, that he was unemployed, and that he provided no support for his one-year-old son. These factors are highly indicative of character. Nonetheless, Simmons asserts that his family and background “illustrated good character” and that the circuit court gave these factors insufficient weight. Simmons misconstrues the circuit court’s remarks. The circuit court considered Simmons’s upbringing but did not view his family circumstances as entirely positive indicia of character. Rather, the circuit court

expressed dismay that Simmons did not follow the example set for him by family members who demonstrated the value of hard work and education. *See State v. Thompson*, 172 Wis. 2d 257, 265, 493 N.W.2d 729 (Ct. App. 1992) (whether a factor or characteristic is deemed mitigating or aggravating lies within circuit court’s discretion). Although the circuit court did not assess Simmons’s character in precisely the light that Simmons would have preferred, that is not an erroneous exercise of discretion. *See Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) (our inquiry is whether circuit court exercised discretion, not whether discretion could have been exercised differently).

¶10 The circuit court also discussed the need to protect the community. The circuit court recognized both that Simmons had no prior criminal convictions and that Simmons was required to comply with the reporting requirements of the sex offender registry for the remainder of his life.

¶11 Simmons complains that the circuit court did not consider all the information in the record. The circuit court was not required to do so. Rather, the circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. *Stenzel*, 276 Wis. 2d 224, ¶16.

¶12 Simmons argues that the circuit court did not explain “the purpose or goal in choosing the length of the sentence.” We cannot agree. The circuit court’s remarks reflect that rehabilitation and deterrence were its greatest concerns. The circuit court imposed probation and emphasized that Simmons must obtain a high school equivalency degree and “put [him]self in a position to be gainfully employed.” The circuit court ensured that Simmons had an incentive not to squander the opportunity that probation afforded him, and expressly cautioned him

that failure to comply with the conditions of probation would lead to a term of imprisonment, including two years of initial confinement. The sentencing remarks sufficiently explain the reasons for the penalty selected. The circuit court is not required to state with mathematical precision why each day of a defendant's sentence is essential to the sentencing goals. *See Gallion*, 270 Wis. 2d 535, ¶49. Rather, the circuit court must discuss the relevant factors in a way that explains “a rational basis for the ‘general range’ [of the sentence].” *State v. Klubertanz*, 2006 WI App 71, ¶21, 291 Wis. 2d 751, 713 N.W.2d 116 (citation omitted). The circuit court fulfilled its obligation here.

¶13 Simmons's appellate brief suggests that he is dissatisfied with the disposition in part because the circuit court required that he spend six months in jail as a condition of probation. The circuit court has broad discretion in selecting appropriate conditions of probation. *State v. Simonetto*, 2000 WI App 17, ¶6, 232 Wis. 2d 315, 606 N.W.2d 275. On appeal, we will affirm the conditions imposed if they “appear to be reasonable and appropriate.” *Id.* (citation omitted). We assess the apparent reasonableness and appropriateness of a condition by determining whether it serves the objectives of probation, namely, fostering rehabilitation of the defendant and protecting the state and community interest. *See State v. Nienhardt*, 196 Wis. 2d 161, 167, 537 N.W.2d 123 (Ct. App. 1995).

¶14 The condition that Simmons spend six months in jail appears reasonably related to the goals of probation. The condition serves to “motivate] [Simmons's] consciousness of all the consequences of his crime.” *See State v. Beiersdorf*, 208 Wis. 2d 492, 503, 561 N.W.2d 749 (Ct. App. 1997). We cannot fault the circuit court for ensuring that Simmons understands the risks of failing to exercise the judgment expected of adults when they interact with children, particularly in light of Simmons's assertions on appeal that his sexual conduct

with the thirteen-year-old victim was “factually consensual” and took place when the child “made the overture to have sexual intercourse with him.”

¶15 We reject Simmons’s contention that the circuit court imposed an unduly harsh sentence. “A sentence is unduly harsh when 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.’” *State v. Prineas*, 2009 WI App 28, ¶29, 316 Wis. 2d 414, 766 N.W.2d 206 (citation omitted).

¶16 “A sexual assault of a child is a serious offense.” *State v. Fuerst*, 181 Wis. 2d 903, 916, 512 N.W.2d 243 (Ct. App. 1994). Simmons faced a forty-year term of imprisonment upon conviction. See WIS. STAT. §§ 948.02(2), 939.50(3)(c). The circuit court imposed and stayed a sentence that is just one-eighth of the maximum, and placed Simmons on probation with six months in jail as a condition. The penalty imposed is far below the limits of the maximum sentence and thus cannot be considered disproportionate or shocking. See *State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983).

¶17 Finally, we reject Simmons’s claim that the circuit court erroneously denied his motion for sentence modification. “We review a motion for sentence modification by determining whether the sentencing court erroneously exercised its discretion in sentencing the defendant.” *State v. Noll*, 2002 WI App 273, ¶4, 258 Wis. 2d 573, 653 N.W.2d 895. We have already determined that the circuit court properly exercised its sentencing discretion. Accordingly, the circuit court did not err by denying Simmons’s motion.

By the Court.—Judgment and order affirmed.

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

