COURT OF APPEALS
DECISION
DATED AND FILED

December 7, 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. 2009AP3110-CR

Cir. Ct. No. 2008CF559

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALEJANDRO HERNANDEZ MARTINEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Alejandro Martinez, pro se, appeals from a judgment of conviction for sexual assault of a twelve-year-old child, and an order denying his motion for sentence modification. Martinez argues “in Mexico older men as a custom date and have sex with underage girls routinely.” Martinez

insists this alleged cultural custom constitutes a "new factor" entitling him to sentence reduction. In the alternative, Martinez argues his trial counsel was ineffective for failing to raise the issue at sentencing. He also claims the court inadequately explained the reasons for selecting the particular sentence imposed. We reject Martinez's arguments and affirm.

¶2 Martinez is not entitled to sentence reduction on the basis of a new factor. Whatever else may be said about his argument that it is the cultural norm for older men to have sexual relations with children in Mexico, Martinez misrepresents the record. Trial counsel raised the cultural argument at sentencing, and the circuit court considered and rejected the argument as a mitigating circumstance. Martinez's premise is therefore erroneous; the cultural argument is not a new factor. *See* ***State v. Franklin***, 148 Wis. 2d 1, 8, 434 N.W.2d 609 (1989).

¶3 The court also adequately explained Martinez's sentence of eight years' initial incarceration and eight years' extended supervision. The court's sentence was based upon proper factors, including Martinez's character, the severity of the offense and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶23, 270 Wis. 2d 535, 678 N.W.2d 197. Although positive aspects of Martinez's character were noted, the court was incredulous that Martinez would believe it was acceptable for a thirty-two-year-old man to have sexual intercourse with a twelve-year-old girl. The court also found "outrageous" Martinez's excuse that the girl invited him to have sex. The court appropriately concluded that anything less than the sentence imposed would depreciate the seriousness of the crime and the need to protect the public. The court adequately explained the sentence it imposed.

¶4 We need not address the State's alternative argument that even if we determined the court's sentencing remarks were inadequate under ***Gallion***, the record independently supports the sentence. If we were to reach the issue, we would agree with the State's analysis and we would adopt the argument in its brief as if set forth herein.

By the Court.—Judgment and order affirmed.

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