

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 15, 2011

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. 2010AP189-CR

Cir. Ct. No. 2008CF5392

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GREG TYRONE HINES,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Greg Tyrone Hines appeals from a judgment of conviction, entered upon his guilty plea, on one count of first-degree sexual assault

of a child.¹ Hines also appeals from an order denying his motion for resentencing. Hines contends the circuit court erroneously exercised its sentencing discretion by failing to consider mitigating factors and his character, by punishing him for treatment needs, and by failing to link the length of the sentence with sentencing objectives. We reject Hines's arguments and affirm the judgment and order.

¶2 Hines engaged in repeated sexual contact with a nine-year-old victim. While the criminal complaint charges Hines based on a specific incident, the contact may have been ongoing for up to two years, five times a week. Hines admitted to the events as charged in the complaint. In exchange for Hines's guilty plea, the State agreed to recommend ten years' initial confinement and five years' extended supervision and to not file any additional charges that might have arisen from investigation of the charged offense. Following acceptance of the plea, the circuit court sentenced Hines to seven years' initial confinement and seven years' extended supervision.

¶3 Hines moved to reconsider, asking the court "to eliminate or alternatively reduce the initial confinement" for various reasons, including the reason currently advanced on appeal.² The court denied the motion, and Hines appeals.

¹ Counsel represents that Hines was convicted of repeated sexual assault of the same child, contrary to WIS. STAT. § 948.025(1)(e). In fact, Hines was convicted of first-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(1)(e), as indicated by the complaint, the plea questionnaire, and the plea hearing. Also, the maximum penalty for the crime, a Class B felony, is sixty years' imprisonment, not forty years and a \$100,000 fine as counsel recites. *See* WIS. STAT. § 939.50(3)(b).

² The motion also recites the incorrect charge and penalty. It also indicates the State argued for a sentence consisting of seven years' initial confinement and ten years' extended supervision when, in fact, the State argued for ten years' initial confinement and five years' extended supervision, as required by the plea bargain.

¶4 Sentencing is committed to the circuit court’s discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. A defendant challenging a sentence has a burden to show an unreasonable or unjustifiable basis in the Record for the sentence at issue. *See State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912, 925 (1998). We start with a presumption that the circuit court acted reasonably. *Ibid.* We do not interfere with a sentence if discretion was properly exercised, *see id.*, 217 Wis. 2d at 418–419, 576 N.W.2d at 925, and we do not substitute our preference merely because we might have imposed a different sentence, *see Gallion*, 2004 WI 42, ¶18, 270 Wis. 2d at 549, 678 N.W.2d at 203.

¶5 In its exercise of discretion, the circuit court is to identify the objectives of its sentence. *Id.*, ¶40, 270 Wis. 2d at 556, 678 N.W.2d at 207. These objectives include but are not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. *Id.*, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. In determining the sentencing objectives, we expect the court to consider a variety of factors, including the gravity of the offense, the character of the defendant, and the need to protect the public. *See State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 698–699, 786 Wis. 2d 409, 415. The weight assigned to the various factors is left to the circuit court’s discretion. *Id.*, ¶28, 326 Wis. 2d at 699, 786 N.W.2d at 415.

¶6 Hines contends that sentence modification is warranted because (1) mitigating factors support a lighter sentence but were not explained by the court; (2) his character was not meaningfully considered; (3) the court punished him for treatment needs; and (4) the court did not adequately link the sentence to its objectives.

¶7 We reject outright a claim that mitigating factors and character were not considered. The court made several observations of Hines’s positive attributes, and character appears to be the fact the court discussed most in-depth. While Hines’s brief lists a multitude of facts he believes were relevant, we expect the circuit court to discuss only the factors *it* deems relevant—not every item of minutiae counsel can identify. See *State v. Echols*, 175 Wis. 2d 653, 683, 499 N.W.2d 631, 641 (1993).

¶8 Hines asserts that his “actions and articulated needs demonstrated a need for treatment, not punishment” and that he has a “psychological need [that] should not be punished.” Whether punishment or treatment should be an objective of sentencing is left to the circuit court’s discretion. Hines’s argument is based simply on his disagreement with the court’s priorities. That disagreement does not constitute a basis for reversal.

¶9 Finally, Hines argues the court simply did not link the length of the sentence to the factors and objectives. The amount of necessary explanation varies from case to case. *Gallion*, 2004 WI 42, ¶39, 270 Wis. 2d at 556, 678 N.W.2d at 207. “On appeal, we will ‘search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained.’” *Lechner*, 217 Wis. 2d at 419, 576 N.W.2d at 925 (quoting *McCleary v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512, 522 (1971)). The exercise of discretion does not lend itself to “mathematical precision,” nor do we require the recitation of magic words. *Gallion*, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678 N.W.2d at 209.

¶10 Our review of the Record satisfies us that the circuit court properly exercised its sentencing discretion. Its comments reveal objectives of deterrence and punishment. The court explained the seriousness of the offense, calling it

“grossly inappropriate.” In addition, the court observed that although there was an attempt to shift blame to the victim—who was allegedly hypersexualized and complicit in Hines’s assaults—Hines is an adult who should have known better. The court noted that Hines had many positive attributes, but wondered what type of message it would send the community with its sentence. Ultimately, the court concluded that it simply could not minimize the ongoing assault of a child over a period of years, resulting in the sentence imposed.

¶11 The circuit court’s decision may not have been accompanied by the lengthiest of explanations, but the sentence is nevertheless the product of a proper exercise of discretion. Accordingly, there was no basis for granting the postconviction motion for resentencing, and there is no reason for this court to reverse.

By the Court.—Judgment and order affirmed.

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

