

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 2, 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. 2010AP2837-CR**

**Cir. Ct. No. 2010CF70**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRISTOPHER H. COPLEY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Barron County: TIMOTHY M. DOYLE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Christopher Copley appeals a judgment of conviction for three counts of second-degree sexual assault of a child, and an order denying postconviction relief. Copley argues the circuit court erroneously

exercised its sentencing discretion by failing to consider mitigating information conveyed in Copley's allocution. We affirm.

¶2 The sexual assaults involved Copley's three nephews, ages eight, twelve and fifteen. Copley was about forty years old and living with his sister, her husband and their children. Copley would tell the nephews when they came to his room to play Xbox or look for candy that they would have to show him their penis. Copley ultimately performed oral sex on all three boys. The eight year old reported the offenses to the school principal when questioned about another matter.

¶3 Copley pled guilty to three counts of second-degree sexual assault of a child. The circuit court imposed consecutive sentences of sixteen years' initial confinement and nine years' extended supervision on each count. In a postconviction motion seeking resentencing or sentence modification, Copley alleged the court failed to consider mitigating comments he made in his allocution.

¶4 Copley began his allocution by apologizing to his family, acknowledging that he was a "horrible uncle" and had "hurt you three boys and in actuality, the whole family." Copley then addressed his nephews and stated: "But you told someone. That took a lot of courage and a lot of strength. I am proud of you all and I am not mad at any of you. I need help so I don't hurt anyone else like this again. Thank you for telling someone."

¶5 Copley argued in the postconviction proceedings that the circuit court erred by treating his comments as aggravating when they were actually expressions of responsibility and remorse. The court denied the request for sentencing and Copley now appeals.

¶6 We review sentencing decisions for erroneous exercises of discretion. *State v. Stenzel*, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20. Sentencing decisions are afforded a strong presumption of reasonability and we will search the record for facts that support a reasonable exercise of discretion. *State v. Hall*, 2002 WI App 108, ¶19, 255 Wis. 2d 662, 648 N.W.2d 41.

¶7 Copley argues the circuit court erroneously exercised its sentencing discretion by refusing to consider his statements in allocution “that can only be construed as mitigating.” Copley contends his statements reflected remorse, regret and responsibility, and also correctly noted that his crimes did not involve force or violence. Copley insists the mitigation is particularly strong when his statements are viewed in the context of his own sexual victimization by family members.

¶8 Copley’s assertion that the circuit court refused to consider his lack of violence is based upon the court’s statement that Copley did not get “brownie points” for not using violence. The court also told Copley he did not get a “gold star for saying” that he was not mad at his nephews. However, the court’s statement referred only to Copley’s statement that he was not mad at his nephews, not to the allocution as a whole. The record also demonstrates the court did not refuse to consider the lack of violence. Rather, the court did not allow it to mitigate the seriousness of the crimes.

¶9 It does not follow that because a crime does not involve violence it is therefore less serious. The court explained that manipulation can be just as bad as violence. The court stated that Copley forced the boys “through manipulation. ... You forced them to do what they did in a very cunning kind of way, but you forced them.” Copley responds that “[t]he violence and restraint used against Copley explains why he would view the use of physical force, or its absence, as

significant when assessing the seriousness of the offense.” However, he fails to provide citation to legal authority that requires sentencing according to a defendant’s subjective point of view.

¶10 Regardless, the court considered Copley’s background as part of its character analysis. The court stated, “I know you had a tough go of it. ... [N]obody could write a worse personal history ....” However, the court considered Copley’s crimes in the context of his background and sentenced him accordingly. The court also indicated that it “listened with much interest to what Mr. Copley has told me.” The court further noted that Copley took responsibility in the allocution but not in prior statements. In the end, the court chose not to give Copley’s character, including his statements in allocution, a large amount of weight. The weight to be accorded particular factors in sentencing is for the circuit court to determine. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶11 Copley also argues the circuit court could not fully and fairly assess Copley’s character and the need to protect the public without considering his statements showing rehabilitative potential. Copley claims he was attempting to convey to his nephews that it was entirely Copley’s fault and that he was glad they had reported his crimes. Copley purports that he wanted to “relieve the boys of the sort of guilt that he had felt as a child ....” Copley asserts that when a person being sentenced for a sex offense not only admits guilt but expresses remorse and a desire for help, that person has taken “a first step toward rehabilitation.”

¶12 However, the court did give consideration to Copley’s chances of rehabilitation and the setting in which it should occur. It found the need for rehabilitation “extreme.” The court did not find Copley to be beyond

rehabilitation, but did point out his record of prior offenses and his failure to rehabilitate himself in the past. The court ultimately concluded that the need to protect the public from Copley and the gravity of the offenses outweighed rehabilitative concerns.

¶13 The court considered the proper sentencing factors and clearly indicated why consecutive sentences were necessary. The sentences imposed were far less than the maximum allowed by law, and included a risk reduction, offering Copley a chance to reduce his time by approximately 25%. The court properly exercised its sentencing discretion.

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

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

