COURT OF APPEALS
DECISION
DATED AND FILED

September 27, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP3082-CR **Cir. Ct. No. 2009CF10**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAURENCE J. ULRICH,

DEFENDANT-APPELLANT.

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

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Laurence Ulrich appeals judgments convicting him of two counts of first-degree sexual assault of a child and an order denying his motion for postconviction relief. Ulrich argues he is entitled to resentencing

because the circuit court did not adequately explain its sentencing rationale. We disagree and affirm.

BACKGROUND

¶2 On January 5, 2009, Ulrich's granddaughter told investigators that Ulrich had rubbed her buttocks and vagina with his hand at least twenty times during December 2008, both over and underneath her clothing. Ulrich's granddaughter was seven years old at the time. Police interviewed Ulrich later that day. Ulrich admitted he had touched his granddaughter's buttocks and vagina approximately twenty times between Thanksgiving 2008 and January 1, 2009. Ulrich also admitted he had sexual contact with his daughter, his granddaughter's mother, over fifty times between 1987 and 1989, beginning when his daughter was seven years old. He stated that he underwent therapy for about one year in 1998 after his daughter revealed the assaults, but the police were never involved.

¶3 Ulrich pled guilty to two counts of first-degree sexual assault of a child, and the case proceeded to sentencing. A presentence investigation recommended concurrent sentences of ten to thirteen years' initial confinement and four to six years' extended supervision on each count.

¶4 At sentencing, the State recommended concurrent sentences of fifteen years' initial confinement followed by "a lengthy period" of extended supervision. The State argued that a harsh sentence was appropriate, given the large number of incidents with Ulrich's granddaughter. The State also pointed out that Ulrich's conduct escalated over time, going "from the type of touching that could be explained innocently if he were caught to much more blatant touching of the private parts of the victim." Furthermore, the State emphasized that the granddaughter was not Ulrich's first victim and that, although Ulrich had gone

through counseling in 1998, that had not stopped him from assaulting his granddaughter ten years later. The State conceded Ulrich had no prior record, but argued his lack of a prior record did not "even come[] close to outweigh[ing] the acts that were done here."

¶5 The defense recommended five years' initial confinement and five years' extended supervision on the first count. Concurrent to that, the defense recommended that the court withhold sentence on the second count and impose twenty years' probation. The defense emphasized that Ulrich was a first-time offender, had cooperated with police, and was ashamed of what he had done. Defense counsel also pointed out that Ulrich had a long-term marriage, a good employment history, and had served in the military.

¶6 After the defense made its recommendation, Ulrich exercised his right of allocution and apologized to his family for his actions. The court then pronounced its sentence on the first count:

> The relationship between a grandfather and a grandchild, granddaughter in this case, is one of trust, love and affection. You have violated that trust as [the prosecutor] has indicated. Very difficult to understand how the mind of a felon works to allow them to do such an act. You have recognized the hurt and great stress that you have caused the greater family that you have been a part of. My job as a judge is to recognize the seriousness of the offense, and that we all agree it is a serious offense. The damage you've done to the child and now we know about the previous acts with your daughter, which were more serious. The fact that you've been through rehabilitation at that time and it didn't solve the problem.
>
> So in order to protect society in the future of any future potential victims, it seems to the Court that we have a recommendation of 5 years by your attorney, incarceration of 10 to 13 years incarceration by the PSI reporter and 15 years incarceration by the State, with additional Extended Supervision on each one of these sentences. Taking into consideration those recommendations, taking into

> consideration the fact that you have for all intents and purposes to other people lived a prosocial life except for these incidents, which overcome all that prior love and affection people had for you and you had for them, the Court is going to sentence you to an imprisonment of 30 years; 13 years incarceration and 17 years Extended Supervision.

On the second count, the court withheld sentence and placed Ulrich on probation for ten years, consecutive to his sentence on the first count.

¶7 Ulrich filed a motion for postconviction relief, seeking resentencing. He argued the circuit court's sentencing remarks were inadequate under ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. The court denied Ulrich's motion after a short hearing, stating, "The seriousness of the offense overrode [Ulrich's prosocial life] and the fact that he had been in prior counseling on a similar offense."

DISCUSSION

¶8 Ulrich argues he is entitled to resentencing because the circuit court did not adequately explain its sentencing rationale. Sentencing is committed to the circuit court's discretion. *See* ***id.***, ¶17. Sentencing decisions "'are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.'" ***Id.***, ¶18 (quoting ***State v. Borrell***, 167 Wis. 2d 749, 781-82, 482 N.W.2d 883 (1992)). A reviewing court may search the record to determine whether a sentence may be sustained as a proper discretionary act. *See* ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971); ***State v. Odom***, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695. Furthermore, a case should be remanded for resentencing only when an erroneous exercise of discretion is clearly shown. ***State v. Grady***, 2007 WI 81, ¶32, 302 Wis. 2d 80, 734 N.W.2d 364.

¶9 In ***Gallion***, our supreme court stated that circuit courts must "explain the reasons for the particular sentence they impose" and "provide a 'rational and explainable basis' for the sentence." ***Gallion***, 270 Wis. 2d 535, ¶39 (citation omitted). Specifically, a court must address three things during its sentencing remarks. First, the court must "specify the objectives of the sentence." ***Id.***, ¶40. Proper sentencing objectives include protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others. ***Id.*** Second, the court must "describe the facts relevant to these objectives." ***Id.***, ¶42. Third, the court must "identify the factors that were considered in arriving at the sentence[.]" ***Id.***, ¶43. The primary factors the court must consider are 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 court may also consider additional factors. *See* ***id.***

¶10 Here, the State concedes that the circuit court's remarks "do not present a textbook example of what a sentencing rationale should look like[.]" However, the State argues that, "[g]iving the circuit court's rationale the deference to which discretionary sentencing decisions are entitled, it is possible to view [Ulrich's] sentence … as meeting [the ***Gallion***] criteria if in a minimal way." We agree.

¶11 First, we note that the court identified protection of the public as the primary objective of Ulrich's sentence. The court stated it was sentencing Ulrich "in order to protect society in the future[.]" Protection of the public is a proper sentencing objective. ***Gallion***, 270 Wis. 2d 535, ¶40.

¶12 Second, the court identified facts it considered relevant to its sentencing objective. The court noted that the relationship between a grandparent

and grandchild involves trust, and Ulrich violated that trust. The court also stated that Ulrich had "damage[d]" his granddaughter and had caused his entire family "hurt and great stress[.]" The court then pointed out that Ulrich had previously committed similar, more serious acts involving his granddaughter's mother. Finally, the court noted that Ulrich had already been through rehabilitation, but it "didn't solve the problem." Although the court did not describe these facts in detail, they were fully described in the complaint, which Ulrich allowed the court to rely on in making its finding of guilt.

¶13 Third, the court's remarks indicate that the court considered the three primary sentencing factors: the gravity of the offense, the character of the defendant, and the need to protect the public. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23. During sentencing, the court emphasized that Ulrich had committed "a serious offense." The court also mentioned Ulrich's character, stating that Ulrich had lived "a prosocial life" but that "these incidents" involving his granddaughter had "overcome all that prior love and affection people had for you and you had for them." Similarly, at the postconviction hearing, the court explained that "[t]he seriousness of the offense overrode [Ulrich's prosocial life] …." As discussed above, the court also considered the need to protect the public. *See supra*, ¶11. Additionally, the court considered other factors, including the impact of the crime on the victim, *see* ***Gallion***, 270 Wis. 2d 535, ¶65, the recommendations of the prosecutor and PSI author, *see* ***State v. Marhal***, 172 Wis. 2d 491, 500-01 n.7, 493 N.W.2d 758 (Ct. App. 1992), and Ulrich's prior failure at rehabilitation, *see* ***Ziegler***, 289 Wis. 2d 594, ¶23 (defendant's history of undesirable behavior pattern and need for close rehabilitative control are proper factors). Thus, while the court's discussion of sentencing factors was not extensive, the court did touch on a number of appropriate factors.

¶14 Admittedly, the court could have explained more thoroughly how the relevant factors "fit the [sentencing] objectives" and influenced the sentence imposed. *See* ***Gallion***, 270 Wis. 2d 535, ¶43. However, even without more detailed remarks, the court's reasoning is obvious. Ulrich's lengthy sentence was designed to promote public safety by incapacitating a defendant who had committed multiple, serious crimes against multiple victims and who had previously failed at rehabilitation. Ulrich has not shown that the circuit court erroneously exercised its discretion. *See* ***Grady***, 302 Wis. 2d 80, ¶32.

By the Court.—Judgments and order affirmed.

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