

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 27, 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. 2011AP477-CR**

**Cir. Ct. No. 2010CM945**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRISTINA L. CONTIZANO,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Rock County:  
MICHAEL R. FITZPATRICK, Judge. *Affirmed.*

¶1 VERGERONT, J.<sup>1</sup> Christina L. Contizano appeals her sentence on four counts of obstruction of a police officer in violation of WIS. STAT.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) and (3) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

§ 946.41(1) and the court's order denying her motion for postconviction relief. We affirm for the following reasons.

### BACKGROUND

¶2 The criminal complaint with respect to the obstruction charges alleged that Contizano told police officers that she had no knowledge about the location of her daughter, who had run away. At the time Contizano spoke with the police, her daughter's father and his wife ("the Walworths") had primary placement of the daughter and did not know the location of the daughter. Contizano later admitted that she had driven the daughter to Kansas.

¶3 Contizano pled guilty to the obstruction charges pursuant to a plea agreement with the State. In the plea agreement, the State agreed to dismiss outright all but one charge in a related case. The one charge in this related case that was not dismissed outright was a count of felony bail jumping, which, pursuant to the plea agreement, was dismissed and read in. The parties further agreed that the charges that were dismissed outright in this related case and a charge of interference with child custody that had been previously dismissed in another related case would not be mentioned at the sentencing hearing; nor would the facts underlying these charges be mentioned.

¶4 At sentencing, the court asked the State: "[A]re there any victim notification issues for today ...?" The State responded by stating, "the victims are here ...." When the State gave this response, the State was referring to the Walworths. Over Contizano's objection, the court permitted the Walworths' attorney to speak. The Walworths' attorney recommended that the court sentence Contizano to nine months jail time as a condition of probation. At the conclusion of the hearing, the court sentenced Contizano to two years' probation on each of

the obstructing counts, to run concurrently, and a nine-month period of incarceration as a condition of probation.

¶5 Contizano filed a postconviction motion contending that the circuit court erroneously exercised its discretion when it considered the Walworths' statements at sentencing and that the prosecutor's statement to the court referring to the Walworths as "victims" violated the plea agreement. The circuit court denied the motion. Contizano appeals, raising the same two issues on appeal.

### DISCUSSION

¶6 We first address Contizano's contentions that the circuit court erroneously exercised its discretion when it considered the Walworths' statements at sentencing. We will not disturb a sentence imposed by the circuit court unless the court erroneously exercised its discretion. *State v. Thompson*, 172 Wis. 2d 257, 263, 493 N.W.2d 729 (Ct. App. 1992). A circuit court erroneously exercises its discretion when it fails to state the relevant and material factors that influenced its decision, relies on immaterial factors, or gives too much weight to one sentencing factor in the face of other contravening considerations. *Id.* at 264 (citation omitted). We follow a "strong and consistent policy" against interfering with the circuit court's sentencing discretion, and we indulge a "strong presumption that the sentencing court acted reasonably." *State v. Harvey*, 2006 WI App 26, ¶46, 289 Wis. 2d 222, 710 N.W.2d 482

¶7 We conclude the court did not erroneously exercise its discretion when it considered the Walworths' statements at sentencing. WISCONSIN STAT. § 972.14(3)(a) requires that the sentencing court allow a victim to make a statement to the court prior to sentencing if the victim wants to make a statement. WISCONSIN STAT. § 950.02(4) defines the term "victim" as that term is used in

§ 972.14(3)(a). Specifically, it provides that the term “victim” includes: (1) “A person against whom a crime has been committed”; and (2) “If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.” § 950.02(4)(a)-(b). In addition to mandating that the court permit a victim to make a statement at sentencing, WIS. STAT. § 972.14(3)(a) also provides that the court may allow “any other person” to make or submit a statement.

¶8 Contizano provides no persuasive reason why the Walworths cannot be considered victims under that statute. Instead, Contizano notes that “[m]any crimes define intentional acts done to or directed at a certain victim. The crime of obstruction does not refer to an act done to a specific victim.” However, WIS. STAT. § 972.14(3)(a) does not limit the “victims” that may make a statement at sentencing to those that are identified in the statute defining the crime.

¶9 Contizano acknowledges that the court could consider the Walworths’ statements pursuant to WIS. STAT. § 972.14(3)(a) as a statement by “any other person.” However, Contizano contends, the circuit court gave too much weight to the Walworths’ statement. According to Contizano, the circuit court gave the Walworths’ statements as much weight as a court should give a victim’s statement, which is, according to Contizano, more weight than a statement of “any other person” should be given.

¶10 Even if we assume without deciding that the Walworths’ statements were properly considered as a statement of “any other person,” and not as “victims,” the record reflects that the circuit court considered various relevant factors, including “the seriousness of the offenses and the character and rehabilitative needs of the defendant.” Nothing in the record establishes that the circuit court gave undue weight to the Walworths’ statements. Accordingly, we

conclude the circuit court did not erroneously exercise its sentencing discretion when it considered the Walworths' statements, regardless whether the statements are deemed statements of "victims" or statements of "any other person" under WIS. STAT. § 972.14(3)(a).

¶11 We next address Contizano's contention that the prosecutor's statement to the court referring to the Walworths as "victims" violated the plea agreement. When we review an alleged breach of a plea agreement where the facts are undisputed on appeal, the question is one of law to be reviewed de novo. See *Harvey*, 289 Wis. 2d 222, ¶31. An "end-run" around a plea agreement constitutes a breach, just as an explicit repudiation does. *Id.*, ¶32.

¶12 We conclude the State did not breach the plea agreement by referring to the Walworths as "victims." Contizano concedes that the prosecutor never mentioned the charges that the State had agreed not to discuss pursuant to the plea agreement. The prosecutor merely responded to the court's question as to whether any victims wished to make a statement at the hearing. Contizano has not presented a developed argument explaining why this response was either an explicit repudiation or an "end-run" around the terms of the plea agreement. To the extent Contizano may be suggesting that the prosecutor was involved in bringing the Walworths to court so that they or their attorney could make comments that the State was not permitted to make under the plea agreement, there are no facts of record that support this conclusion.

## CONCLUSION

¶13 For the above reasons we affirm the sentence and order denying the postconviction motion.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4.

