

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2012

Diane M. Fremgen
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. 2011AP2105-CR

Cir. Ct. No. 2010CF1906

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MATTHEW O. ROACH,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: WILLIAM E. HANRAHAN, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Matthew Roach appeals from a judgment of conviction for battery, disorderly conduct, resisting or obstructing an officer, and

¹ 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.

bail jumping, in violation of WIS. STAT. §§ 940.19(1), 947.01, 946.41(1), and 946.49(1)(a), respectively, as well as the order denying Roach's postconviction motion. He contends the circuit court erroneously exercised its discretion under WIS. STAT. § 973.049 when it ordered that Roach have no contact with his mother or stepfather for one year as a condition of his probation.

¶2 We conclude that the circuit court did not erroneously exercise its discretion when it ordered that Roach have no contact with his mother or stepfather for one year as a condition of his probation. Accordingly, we affirm.

BACKGROUND

¶3 In August 2010 police responded to an incident outside the home Roach shared with his mother and stepfather. Roach's mother later informed responding officers of the following facts. Roach and his girlfriend were brought by friends to Roach's family home, where Roach and his girlfriend engaged in an argument in the front yard. When Roach's stepfather stepped outside to observe what was happening, Roach "immediately became upset that [his stepfather] came out and [Roach] began to push him several times, which caused [his stepfather] to fall into the bushes." Roach's mother went inside to call 911. However, before the 911 operator answered, Roach's mother heard screaming outside, so she set the phone down and went out to the yard. There she observed Roach place his stepfather in a headlock in the front yard. Roach's mother attempted to pull Roach off his stepfather, but Roach pushed his mother away.

¶4 Roach's mother heard the phone ring, so she went inside to answer the phone call, which was a call from the 911 operator. She told the 911 operator what was happening. Roach's mother looked out her front door and saw Roach slap his girlfriend across the face. Roach came inside, took the phone from his

mother, pushed her, and slammed the phone down. Police later arrived at the scene and attempted to arrest Roach, who resisted arrest.

¶5 Roach's friends who witnessed his behavior before he was taken to his family home informed police that Roach and his girlfriend began their argument earlier in the evening at a friend's home. During the incident, Roach grabbed his girlfriend by the throat with both of his hands and picked her up off the ground. He had also slapped her in the face multiple times.

¶6 Roach entered guilty pleas to four misdemeanor charges arising out of this incident. The circuit court withheld sentence and placed Roach on probation for three years. The circuit court ordered as one of the conditions of Roach's probation that he not have any contact, direct or indirect, with his mother or stepfather for the first year of his probation.

¶7 Roach moved the court to modify his conditions of probation to remove the no-contact order, and the court denied the motion. Roach also filed a postconviction "motion to quash contact restriction order," which the court denied.

DISCUSSION

¶8 On appeal Roach renews his argument that the circuit court erroneously exercised its discretion under WIS. STAT. § 973.049 when it ordered that Roach have no contact with his mother or stepfather during the first year of

his probation. The State responds that the imposition of this condition was within the circuit court's discretion.²

¶9 WISCONSIN STAT. § 973.09(1)(a) provides that circuit courts may withhold sentence and place a person convicted of a crime on probation. Generally, “[t]he court may impose any conditions which appear to be reasonable and appropriate.” *Id.* However, WIS. STAT. § 973.049(2) relates specifically to restrictions on contact imposed as a condition of probation. This statute provides:

When a court imposes a sentence on an individual or places an individual on probation for the conviction of a crime, *the court may prohibit the individual from contacting victims of, or co-actors in, a crime considered at sentencing during any part of the individual's sentence or period of probation if the court determines that the prohibition would be in the interest of public protection.* For purposes of the prohibition, the court may determine who are the victims of any crime considered at sentencing.

Id. (emphasis added).

¶10 In *State v. Campbell*, 2011 WI App 18, ¶23, 331 Wis. 2d 91, 794 N.W.2d 276, we held that the language in § 973.049(2) grants the court discretion to prohibit a defendant from contacting victims of a crime considered at sentencing, as well as to decide who are the victims of a crime considered at sentencing. We will uphold a circuit court's discretionary decisions as long as the

² The State also contends that this issue is moot because the condition of probation Roach challenges expired on January 19, 2012. An issue is moot when its resolution will have no practical effect on the underlying controversy. *Warren v. Link Farms, Inc.*, 123 Wis. 2d 485, 487, 368 N.W.2d 688 (Ct. App. 1985). Subject to certain exceptions, we generally do not address moot issues. *Id.* However, we will consider a moot issue when the issue is likely to be repeated but evades appellate review. *State ex. rel Unnamed Person No. 1 v. State*, 2003 WI 30, ¶19, 260 Wis. 2d 653, 660 N.W.2d 260. The imposition of a one-year no-contact provision as a condition of probation is such an issue. Accordingly, we address Roach's contention.

circuit court “examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789 (citation omitted).

¶11 Roach contends that the circuit court erroneously exercised its discretion because the court imposed the no-contact provision in the interest of rehabilitating Roach, not in the interest of public protection as required by § 973.049(2). However, we conclude the record does not support Roach’s assertion.

¶12 At the plea and sentencing hearing, the circuit court indicated that Roach’s behavior for which he was being sentenced was dangerous. For example, the circuit court stated to the defendant: “You choked [your girlfriend]. You picked her up off the ground by the neck.... People die from that.” The court also found that Roach refused to accept responsibility for his actions, which led him to continue to violate the law. The court explained that the no-contact provision was being imposed to prevent Roach’s behavior from continuing by requiring him to take responsibility for his actions and to not rely on his mother and stepfather for support. Specifically, the court stated: “[I]t is my intent by the no-contact provision to put a stick in the spokes of that machine that has been rolling forward without any relief.” We conclude it was not an erroneous exercise of the court to conclude that putting a stop to repeated dangerous behavior by encouraging Roach to take responsibility for his actions is in the interest of public protection, and that issuing the no-contact provision was a reasonable way to meet this goal.

¶13 Roach also argues that the court improperly considered Roach’s past crimes and juvenile offenses, “despite the statutory mandate that only the crimes

‘considered at sentencing’ constitute grounds for the no contact order.” We disagree with this reading of WIS. STAT. § 973.049(2). This statute provides that a “court may prohibit the individual from contacting victims of ... a crime considered at sentencing.” WIS. STAT. § 973.049(2). However, it does not state that *only* the crimes considered at sentencing can be taken into account when the court determines whether to impose a contact restriction. See *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (when the meaning of statutory language is plain, we apply that plain meaning). Roach does not develop an argument explaining why the statutory language has the meaning he advocates.

¶14 To the extent Roach argues that, because his mother and stepfather consented to contact with Roach in the past, the circuit court erroneously exercised its discretion when it determined that Roach’s mother and stepfather were “victims,” we also reject this contention. WISCONSIN STAT. § 973.049(2) provides that “the court may determine who are the victims of any crime considered at sentencing.” Here, the factual basis of the crimes for which Roach was sentenced involved Roach pushing his mother and stepfather and placing his stepfather in a headlock. It was within the circuit court’s discretion to conclude that his mother and stepfather were victims.

¶15 In light of the foregoing, we conclude the circuit court did not erroneously exercise its discretion when it imposed a one-year no-contact provision as a condition of Roach’s probation.

CONCLUSION

¶16 Accordingly, we affirm the judgment of conviction and the order denying Roach’s motion for postconviction relief.

By the Court.—Judgment and order affirmed.

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

