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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT I**

July 30, 2024

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You are hereby notified that the Court has entered the following opinion and order:

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2023AP113-CR

State of Wisconsin v. George Duane Coriano (L.C. # 2021CF3511)

Before Donald, P.J., Geenen and Colón, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

George Duane Coriano appeals his judgments of conviction for fourth-degree sexual assault and causing mental harm to a child. He also appeals the order denying his postconviction motion, in which he sought resentencing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The charges against Coriano stem from reports to police from two victims, J.S.S. and N.I.O. J.S.S. told police that in July 2016, when she was fifteen years old, she was babysitting for her sister's children one evening while her sister and Coriano, who were dating at the time, went on a boat cruise. J.S.S. fell asleep in her sister's bed. She said she woke up around 3:00 a.m., and both Coriano and her sister were asleep in the bed with her. She woke up again to Coriano touching her vagina over her shorts. She moved away from him and went back to sleep. She said she later woke up to Coriano touching her vagina again, this time under her shorts but over her underwear. She subsequently disclosed the assault to her sister, who confronted Coriano, but he denied having any sexual contact with J.S.S.

J.S.S. reported the sexual assault to police in October 2016. The police spoke to Coriano in an out-of-custody interview. He admitted to sleeping in the bed with J.S.S. and her sister after they returned from the boat cruise, but again denied any sexual contact with J.S.S.

N.I.O. reported to police in July 2021 that Coriano had assaulted her during the summer of 2019, when she was twelve years old, while Coriano lived with her family. She stated that Coriano was babysitting her and her brother one evening. They laid in Coriano's bed to watch a movie, with Coriano laying between N.I.O. and her brother. After her brother fell asleep, N.I.O. stated that Coriano put his hand down the front of her shorts, inside her underwear, and began touching her vagina. She said she tried to remove his hand and wanted to tell him to stop, but she was scared. She stated Coriano continued touching her vagina for approximately thirty minutes.

N.I.O. further stated that there were several other subsequent incidents where Coriano touched her breasts, both over and under her clothing. He also walked in on her while she was

changing and made a comment about how she was “growing up.” Additionally, N.I.O. said that she was “uncomfortable” with the “amount of attention” Coriano gave her during this time, noting that when he was supervising her and other children in the home, he would allow N.I.O. to do things that the other children were not allowed to do.

Coriano was charged in August 2021 with second-degree sexual assault with regard to J.S.S., and first-degree sexual assault of a child under the age of thirteen relating to N.I.O. The matter was set for a jury trial in February 2022. However, on the morning of the trial, the State informed the circuit court that J.S.S. did not wish to participate in the trial. As a result, the State would be able to proceed only on the count of first-degree sexual assault of a child under the age of thirteen, relating to N.I.O. The State proffered a new plea offer based on the elimination of one of the charges, but Coriano rejected it. The circuit court put the case over until the next day.

The parties returned to court the next day with a new plea agreement: one count of fourth-degree sexual assault and one count of causing mental harm to a child, with the State recommending a prison term and sex offender registration. The count of second-degree sexual assault regarding J.S.S. was to be dismissed but read in at sentencing. Coriano pled no contest to both charges. The circuit court confirmed during the plea colloquy that Coriano did not wish to contest the charges, and that he understood that the court would still find him guilty.

A pre-sentence investigation report (PSI) was prepared prior to sentencing. Coriano told the PSI writer that he had “never sexually assaulted anyone.” He stated that he believed the girls had fabricated the allegations against him because they wanted him to provide them with alcohol and smoke marijuana with them. He said he was “hurt” by the allegations, and noted that there was “no proof at all” of the assaults.

The PSI writer also talked to N.I.O.'s mother, D.R.A. D.R.A. explained that Coriano was a close family friend "who was like a brother to her." She further stated that N.I.O. was "really traumatized" and felt betrayed by Coriano, since she had trusted him. D.R.A. said that since the incidents with Coriano, N.I.O.'s "attitude has changed" and she is depressed at times.

Coriano's sentencing was held in May 2022. Both N.I.O. and D.R.A. submitted letters to the circuit court, and D.R.A. made a statement at the sentencing hearing. During his opportunity for allocution, Coriano stated that he was "sorry for what is going on with [D.R.A.]'s family" but that he "would never do none of that stuff." The circuit court responded that it did not find Coriano "very credible in [his] denials" and told him "[y]ou should [have] had a trial if you are going to deny everything." The court further noted that it would have accepted an *Alford*<sup>2</sup> plea from Coriano "based on the reduction of charges and the fact that the victim could have been spared testifying."

The circuit court also categorized Coriano's statement in the PSI about there being no evidence of the allegations as a "misstatement," since both N.I.O. and J.S.S. had provided statements to police about the assaults. The court further observed that when a person is sexually assaulted there is "typically not a room full of witnesses," so there is a lesser chance of the crime being discovered. The court also stated that it found D.R.A. "quite credible" in her statement to the court.

The circuit court imposed a sentence of four years of initial confinement followed by three years of extended supervision for the count of causing mental harm to a child, along with a

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<sup>2</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

concurrent nine-month sentence for the fourth-degree sexual assault count. It also ordered that Coriano register as a sex offender for ten years.

Coriano filed a postconviction motion seeking resentencing, arguing that the circuit court erroneously exercised its discretion by placing undue weight on Coriano's refusal to admit guilt. He also requested to change his no contest plea to an *Alford* plea.

The circuit court rejected Coriano's argument that he "would have received a lighter sentence if he had entered an *Alford* plea rather than a no contest plea."<sup>3</sup> The court explained that its comments relating to an *Alford* plea were compelled by Coriano's denials in the PSI and during the sentencing hearing, and were part of its consideration of Coriano's character and rehabilitative needs, which are proper sentencing factors. The court stated that even if Coriano had entered an *Alford* plea rather than a no contest plea, the resulting sentence "would have been no different." It therefore denied Coriano's postconviction motion. This appeal follows.

"It is a well-settled principle of law that a circuit court exercises discretion at sentencing." *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Our review on appeal is "limited to determining if discretion was erroneously exercised," such as in cases where that discretion was exercised "on the basis of clearly irrelevant or improper factors." *Id.* When the exercise of discretion has been demonstrated, this court "follows a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." *Id.*, ¶18 (citation omitted).

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<sup>3</sup> The circuit court expressed some confusion over Coriano's argument, in that Coriano did not move to withdraw his no contest plea. Coriano did not include the request to change his plea in his appeal, and we therefore will not discuss it. See *State v. Schiller*, 2003 WI App 195, ¶6, 266 Wis. 2d 992, 669 N.W.2d 747 (stating that an issue raised but not briefed or argued is deemed abandoned).

“The principal objectives of a sentence include, but are not limited to, the protection of the community, the punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. To meet these objectives, the court must consider “‘legally relevant factors.’” *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695 (citation omitted). The primary factors for consideration are “the gravity of the offense, the character of the offender, and the public’s need for protection.” *Id.* It is also within the court’s discretion to consider other relevant factors, and to determine the weight given to the factors considered. *Id.*

Coriano’s specific argument is that the circuit court put undue weight on his refusal to admit guilt, and that the court’s comments about an *Alford* plea indicate that it would have imposed a lesser sentence had Coriano entered that type of plea. “An *Alford* plea is similar to a no contest plea in that ‘both lack an express admission of guilt[.]’” *State v. Nash*, 2020 WI 85, ¶34, 394 Wis. 2d 238, 951 N.W.2d 404 (citation omitted). However, “[a]n *Alford* plea goes beyond a no contest plea in the sense that the former involves an outright claim of innocence while the latter involves something less than an express admission of guilt.” *Id.* (alteration in original; citation omitted). Nevertheless, either plea “places the defendant in the same position as though he had been found guilty by the verdict of a jury.” *State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 631-32, 579 N.W.2d 698 (1998). In other words, once Coriano entered his plea—regardless of whether it was a no contest plea or an *Alford* plea—he became “a convicted sex offender” and was “treated no differently than he would be had he gone to trial and been convicted by a jury.” *See id.* at 633.

Nevertheless, the circuit court “is prohibited from imposing a harsher sentence solely because the defendant refused to admit his guilt.” *State v. Fuerst*, 181 Wis. 2d 903, 915, 512

N.W.2d 243 (Ct. App. 1994). However, the court does not erroneously exercise its discretion as long as it “does not attempt to compel an admission of guilt or punish the defendant for maintaining his innocence.” *Id.* In fact, it is proper for the court to take into account a defendant’s refusal to admit guilt as “an indication of his lack of remorse” when considering the need for rehabilitation and protection of the public. *Id.* at 915-16.

The circuit court must, however, also consider other factors besides the refusal to admit guilt when imposing a sentence. *Id.* at 915. When the court gives “undue and almost overwhelming weight to the defendant’s refusal to admit guilt,” it is an erroneous exercise of discretion. *State v. Baldwin*, 101 Wis. 2d 441, 457, 304 N.W.2d 742 (1981) (citation omitted); *State v. Carrizales*, 191 Wis. 2d 85, 96, 528 N.W.2d 29 (Ct. App. 1995) (stating that the circuit court “does not erroneously exercise its discretion when it considers a defendant’s refusal to admit guilt as one of a number of factors at sentencing, so long as the court does not give one factor undue weight”).

Here, the record reflects that the circuit court’s consideration of Coriano’s refusal to admit guilt was related to proper sentencing factors. As the court noted in its postconviction decision, Coriano’s denials were considered as part of his character. Indeed, the court observed at the sentencing hearing that Coriano took “zero responsibility in actuality,” although the court credited him with “spar[ing] the victim from testifying.” The court also found this lack of responsibility to be of concern relative to the public’s need for protection, specifically the “potential for future victims.”

Additionally, the circuit court took into account the charge relating to J.S.S. which was dismissed but read in. The court pointed out that the assaults were “not some isolated incident,”

noting the consistencies between the allegations of both victims, and another consideration relating to the protection of the public. Furthermore, the court considered D.R.A.’s statement at the hearing, and the letters from her and N.I.O., with regard to the gravity of the offense. The court also took into account Coriano’s prior record, and declined to impose the maximum penalty in this case because his record “[did] not warrant that.”

In short, it is clear from the record that the circuit court appropriately considered Coriano’s refusal to admit guilt at sentencing, and considered other relevant factors. We therefore conclude that the circuit court did not erroneously exercise its discretion in sentencing Coriano. *See Fuerst*, 181 Wis. 2d at 915; *Carrizales*, 191 Wis. 2d at 96. Accordingly, we affirm.

For all the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*