



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT II

April 16, 2014

To:

Hon. Kathryn W. Foster
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Jeffrey W. Jensen
735 W. Wisconsin Ave., 12th Fl.
Milwaukee, WI 53233

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Brad Schimel
District Attorney
515 W. Moreland Blvd.
Waukesha, WI 53188-0527

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

2013AP1611-CR	State of Wisconsin v. Deangelo D. Lobley (L.C. # 2011CF31)
2013AP1612-CR	State of Wisconsin v. Deangelo D. Lobley (L.C. # 2011CF678)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

In these consolidated appeals, Deangelo D. Lobley appeals from a judgment of conviction and an order denying his motion to modify sentence. He contends that he is entitled to resentencing because his sentence was unduly harsh. Based on 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 (2011-12).¹ We affirm the judgment and order of the circuit court.

Lobley was convicted following a jury trial of second-degree sexual assault of a child. The charge stemmed an incident at the Ethan Allen School for Boys in which a then seventeen-

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

year-old Lobley coerced a fourteen-year-old boy into performing oral sex on him. The circuit court sentenced Lobley to eighteen years of initial confinement followed by eight years of extended supervision. This was within the maximum possible sentence of twenty-five years of initial confinement and fifteen years of extended supervision. *See* WIS. STAT. §§ 948.02(2), 939.50(3)(c), 973.01(2)(b)3 and (2)(d)2.²

Lobley subsequently filed a motion for postconviction relief, arguing that his sentence was unduly harsh. Following a hearing on the matter, the circuit court denied the motion. This appeal follows.

A circuit court's exercise of its sentencing discretion is presumptively reasonable and our review is limited to determining whether a court erroneously exercised its discretion. *State v. Harris*, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. At sentencing, a court must consider the gravity of the offense, the character of the defendant, and the need to protect the public. *Id.*, ¶28. Additional factors a court may consider include the defendant's remorse, criminal record, and rehabilitative needs. *See id.* The weight a court gives to each of these factors is left to its discretion. *Id.*

A defendant challenging a sentence as an erroneous exercise of discretion on the ground that it was unduly harsh must show that the sentence was "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment

² Lobley was also convicted of exposing his genitals to a child during another incident at Ethan Allen. The circuit court sentenced Lobley to nine months in jail on that count, concurrent. Lobley does not contest that judgment.

of reasonable people concerning what is right and proper under the circumstances.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

On appeal, Lobley renews his argument that his sentence was unduly harsh. He maintains that imposing such a lengthy sentence on a person his age is contrary to public policy and, as such, shocks the conscience of the community. In support of his position, Lobley cites the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455, 2471 (2012), which required sentencing courts to consider a juvenile offender’s youth before imposing a penalty of life without parole.

Upon review of the record, we are not persuaded that the circuit court erroneously exercised its discretion and imposed a sentence that was unduly harsh. Here, the court properly considered the gravity of the offense, Lobley’s character, and the need to protect the public. Moreover, it explicitly noted Lobley’s young age in its sentencing remarks. Ultimately, the court determined that Lobley’s extensive rehabilitative needs and the public’s need for protection outweighed the mitigating fact of Lobley’s youth. This determination was supported by Lobley’s lack of remorse and prior juvenile convictions for first-degree sexual assault of a child. Given these facts, the circuit court reasonably concluded that Lobley posed a high risk of reoffending that warranted a lengthy sentence.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals