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**DISTRICT IV**

May 19, 2014

To:

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

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2013AP205-CR

State of Wisconsin v. Christopher C. King (L.C. #2010CF171)

Before Lundsten, Sherman and Kloppenburg, JJ.

Christopher King was convicted of third-degree sexual assault. He appeals an order denying his postconviction motion for resentencing. He argues that the sentencing court erroneously exercised its discretion by placing too much emphasis on the court's personal feelings, resulting in an unduly harsh sentence. 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 (2011-12).<sup>1</sup> We conclude that the sentencing court properly exercised its discretion, and we affirm the order.

King was charged with second-degree sexual assault of a child under the age of sixteen after the twelve-year-old victim reported that King, on numerous occasions, penetrated her vagina and anus with his penis and finger. King entered a no-contest plea to the reduced charge of third-degree sexual assault. The maximum sentence, consisting of five years of initial confinement and five years of extended supervision, was imposed. In his postconviction motion, King claimed that the sentencing court erroneously exercised its discretion by not basing the sentence on proper factors and allowing the court's personal feeling of disgust at King's conduct to improperly influence the sentence. A hearing was held on the postconviction motion, and the court denied King's request for resentencing.

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. An erroneous exercise of discretion occurs when a sentence is based on irrelevant or improper factors. *Id.* The three primary factors to be considered are the gravity of the offense, the character of the offender, and the need for protecting the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The list of other factors that may be considered is long and often repeated; we need not do so here. *See id.* at 623-24.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

King argues that numerous remarks by the sentencing court were harsh and superfluous, and demonstrated animosity toward King.<sup>2</sup> We know of no authority for the proposition that the sentencing court must impose a sentence in a dispassionate manner. The relevant inquiry is whether the emotion displayed rises to the level of bias or partiality. See *State v. Sinks*, 168 Wis. 2d 245, 257-58, 483 N.W.2d 286 (Ct. App. 1992). It did not rise to that level here.

Even if we accept King's proposition that some of the sentencing remarks were made with rancor and cannot be matched to recognized appropriate sentencing factors, we nonetheless conclude that the imposition of the maximum sentence was a proper exercise of discretion. The sentencing court considered the severity of the offense, including the breach of parental trust and the effect on the victim, to be extremely egregious. In assessing King's character, the court found that King attempted to minimize his behavior and had not demonstrated genuine remorse or contrition. The court also considered the need to protect the public, including the public's right to have punishment, deterrence, and retribution satisfied by the sentence. The court adequately discussed the facts and factors relevant to sentencing King.

We decline to address King's claim that the sentencing court's comments at the postconviction hearing was further evidence that the court improperly relied on the court's personal feelings. The pertinent inquiry "is confined to whether [the sentencing court] erroneously exercised its sentencing discretion based on the information it had at the time of sentencing." See *State v. Klubertanz*, 2006 WI App 71, ¶40, 291 Wis. 2d 751, 713 N.W.2d 116.

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<sup>2</sup> King claims that the sentencing court used demeaning and offensive language in characterizing him and the offense, and that the court also commented that the court would derive satisfaction from the fact that a defendant's life is effectively killed for the period of incarceration, that King would essentially

(continued)

To the extent King claims that his sentence was otherwise unduly harsh or excessive, we reject that claim. A sentence is excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the 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). Five years of initial confinement for the horrific nature of King’s crime does not offend the sense of what would be right and proper under the circumstances.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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suffer at the hands of prison inmates because of the nature of his crime, and that King’s action in trying to defer some blame to the victim was pathetic.