



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

October 22, 2014

To:

Hon. L. Edward Stengel
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Nan Todd
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th Street
Sheboygan, WI 53081

Joseph R. DeCecco
District Attorney
615 N. 6th Street
Sheboygan, WI 53081

Franklyn M. Gimbel
Kathryn A. Keppel
Gimbel, Reilly, Guerin & Brown LLC
330 E. Kilbourn Ave., Ste. 1170
Milwaukee, WI 53202

Debra L. Remington
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707-7857

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

2014AP414-CR

State of Wisconsin v. Victor Garcia, Jr. (L.C. # 2012CF477)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Victor Garcia, Jr., appeals from a judgment convicting him of multiple counts of sexual assault of a child. He contends that the circuit court erroneously exercised its discretion at sentencing. 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 of the circuit court.

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

Garcia was convicted following pleas of no contest to one count of first-degree sexual assault of a child, one count of second-degree sexual assault of a child, and one count of repeated sexual assault of a child. The charges stemmed from a series of sexual contacts that Garcia had with a family friend's daughter when she was between the ages of ten and thirteen. Garcia was a father figure to the girl and had served as a godparent.

For his crimes, the circuit court imposed an aggregate sentence of ten years of initial confinement followed by ten years of extended supervision. This appeal follows.²

On appeal, Garcia contends that the circuit court erroneously exercised its discretion at sentencing. Specifically, he complains that the court failed to articulate and explain its reasoning for sentencing him to ten years of initial confinement.

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. We afford a strong presumption of reasonability to the circuit court's sentencing determination because that court is best suited to consider the relevant factors and demeanor of the defendant. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76.

² No postconviction motion for sentence modification was filed. Generally a motion to modify a sentence is a prerequisite to appellate review of a defendant's sentence. See *State v. Barksdale*, 160 Wis. 2d 284, 291, 466 N.W.2d 198 (Ct. App. 1991). However, we may address an issue subject to forfeiture in the interest of judicial economy. See *State v. Harrell*, 182 Wis. 2d 408, 417, 513 N.W.2d 676 (Ct. App. 1994). As both parties have briefed the issue, we will address Garcia's argument on the merits.

To properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence imposed. *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. The primary sentencing factors that a court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Ziegler*, 289 Wis. 2d 594, ¶23. The weight to be given to each sentencing factor is within the discretion of the court. *Id.* The court may consider other relevant secondary factors as well. *Id.*³

Here, the court explicitly considered the gravity of the offenses, Garcia's character, and the need to protect the public. It also considered several relevant secondary factors. In doing so, the court explained why Garcia's positive attributes were outweighed by his negative behavior and why prison was appropriate. Although the court did not articulate why Garcia received a total of ten years of initial confinement, as opposed to a shorter or longer term, a proper exercise of discretion does not require the court to justify the sentence with mathematical precision. *Gallion*, 270 Wis. 2d 535, ¶49. In any event, on the basis of this record, we are satisfied that the court properly exercised its discretion in sentencing Garcia.

Upon the foregoing reasons,

³ Other secondary factors which may be relevant include: the defendant's past record or history of undesirable behavior patterns; the defendant's personality, character, and social traits; the presentence investigation report; the vicious or aggravated nature of the crime; the degree of the defendant's culpability; the defendant's demeanor before the court; the defendant's age, educational background, and employment history; the defendant's remorse, repentance, and cooperation; the defendant's need for close rehabilitative control; the rights of the public; and the length of pretrial detention. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court need not discuss all of these factors, but rather only those relevant to the case. *Id.*

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

Diane M. Fremgen
Clerk of Court of Appeals