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February 4, 2015

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

2014AP200-CR State of Wisconsin v. Jacob T. Cambridge (L.C. #2012CF4)

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

Jacob Cambridge appeals from a judgment convicting him of second-degree sexual assault of a child and from an order denying his postconviction motion seeking resentencing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

Cambridge pled guilty to the charge against him: second-degree sexual assault of a child, a Class C forty-year felony. WIS. STAT. § 948.02(2); § 939.50(3)(c). During the plea hearing,

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

Cambridge stipulated to the factual basis in the complaint. The complaint alleges that twenty-one-year-old Cambridge met the victim online, traveled to Wisconsin from Nebraska, and sexually assaulted her. The victim was not yet thirteen years old when she and Cambridge began their online contact.

Further facts came out at sentencing. Cambridge and the victim interacted online and via Skype for a period of six to eight months before Cambridge traveled to Wisconsin to meet her. The victim told Cambridge that she was nineteen years old. Cambridge viewed the victim via Skype, and their Skype sessions included sexual discussions, nudity, communication of nude images and sexual conduct by Cambridge during a Skype session. When Cambridge traveled from Nebraska to Wisconsin to meet the victim, the victim was then thirteen years old. Cambridge took the victim to Chicago and sexually assaulted her at a motel upon their return to Wisconsin. Cambridge claimed that he did not know and could not have known that the victim was only thirteen years old and alleged that his lack of knowledge should have mitigated his sentence. The court imposed an eight-year sentence (five years of initial confinement and three years of extended supervision). Postconviction, Cambridge challenged the sentence as a violation of due process and as a misuse of discretion. The circuit court disagreed and declined to resentence. Cambridge appeals.

On appeal, Cambridge argues that due process was violated because the circuit court relied upon unsupported assertions that Cambridge knew the victim was underage. Cambridge also alleges a misuse of sentencing discretion.

At sentencing, the State argued that given the duration and manner of his interactions with the victim, Cambridge must have known or should have known that the victim was much

younger than nineteen. The State suggested that it was unlikely that the victim had been able, over several months and in various communications, including in-person contact, to convince Cambridge that she was other than significantly underage. Essentially, the State argued that Cambridge's claim that he did not know that the victim was underage was not credible. To protect the public, the State recommended incarceration.

The circuit court articulated the following basis for its eight-year sentence. The court reviewed the parties' recommendations, the presentence investigation report which recommended incarceration, the defense's sentencing submissions, and the defense psychologist's testimony. The psychologist concluded, after an evaluation, that Cambridge posed a very low risk of reoffense given the circumstances of this case such that placement in the community on supervision was warranted.

The court acknowledged that strong family support and recommendations favored Cambridge. However, the court found that the offense, a forty-year felony, was severe. The offense was aggravated because Cambridge began and pursued contact with the victim online without verifying the victim's age, conduct that even the defense psychologist found to be high-risk. The court also found aggravating that Cambridge's conduct with the victim became sexual.

On the question of Cambridge's culpability and need for close rehabilitative control, the court conceded the conflicting views of the defense and the State. However, the court placed greater weight upon the presentence investigation report author's impressions and opinions and found them credible under the circumstances of the case. The presentence investigation report author noted that while Cambridge thought the victim was nineteen years old and only learned her true age when they were apprehended, Cambridge admitted that the victim looked young

when he met her in person, she did not let him meet her family, he picked her up other than at her home, and he ignored other signs that the victim's age might not be as she claimed. Notably, Cambridge told the report author that he should have asked more questions about the victim's age, and "I should have listened to my gut" and "about it being too good to be true." The author opined that it was difficult to believe that Cambridge did not realize the victim was underage and suggested that it was not credible that the victim managed to convincingly portray herself as an adult during the months they interacted online and after they met. The author faulted Cambridge for not recognizing that his risky behavior created the criminal charges against him and suggested that Cambridge held the victim responsible for manipulating him into criminal activity.

The sentencing court was charged with exercising its discretion. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. A sentencing court may properly draw inferences from the facts presented at sentencing and from the entire record. *State v. Taylor*, 2006 WI 22, ¶17, 289 Wis. 2d 34, 710 N.W.2d 466. The court applied the three primary sentencing factors: protecting the public, the gravity of the offense, and the need to rehabilitate the defendant. It was within the circuit court's discretion to determine the weight to be placed upon these sentencing factors. *State v. Steele*, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112. The court did not find credible Cambridge's claim that, given the duration and type of interactions he had with the victim, he had no idea that the victim was underage. After

observing that it needed to fashion a sentence that was not unduly harsh or excessive, the court imposed an eight-year sentence.²

At the hearing on Cambridge's postconviction motion challenging his sentence, the circuit court noted that at sentencing, it faced competing versions of Cambridge's culpability and placed great weight on the severity of the offense. The court noted its familiarity with the presentence investigation report author and viewed the report as expressing the author's impressions, which were not materially untrue. The court concluded that Cambridge did not establish that the court relied upon inaccurate information. The record supports the circuit court's refusal to resentence on this basis.

We turn to Cambridge's due process claim premised on what Cambridge contends is the circuit court's determination that Cambridge knew the victim was underage.³ We disagree with Cambridge's characterization of the circuit court's view. Rather, we read the sentencing court's remarks as follows: under all the facts and circumstances known to Cambridge, Cambridge should have suspected that the victim was substantially younger than she claimed, and any claim to the contrary was not credible. The court was entitled to draw such an inference based on the record. *Taylor*, 289 Wis. 2d 34, ¶17. Cambridge did not meet his burden to establish by clear and convincing evidence that the circuit court actually relied upon inaccurate information. *State v. Tjepelman*, 2006 WI 66, ¶28, 291 Wis. 2d 179, 717 N.W.2d 1.

² The circuit court specifically rejected probation because probation would unduly depreciate the severity of the offense.

³ Cambridge advises that the State conceded at the postconviction motion hearing that the circuit court partially relied upon its perception that Cambridge was aware of the victim's actual age. We are not bound by a party's interpretation of the circuit court's remarks.

Cambridge next argues that in three respects, the circuit court misused its sentencing discretion because it applied the wrong legal standard. First, Cambridge claims that the circuit court erroneously found that Cambridge knew that the victim was underage. We have rejected this interpretation of the court's sentencing remarks.

Second, Cambridge faults the circuit court for not explaining why five years of initial confinement was appropriate. A court need not provide a mathematically precise explanation of its sentence. *Gallion*, 270 Wis. 2d 535, ¶49. Our review of the sentencing hearing confirms that the circuit court properly exercised its sentencing discretion when it sentenced Cambridge to five years in prison.

Third, Cambridge argues that the circuit court's goal should have been to fashion a sentence that constituted the least punishment consistent with the court's sentencing goals, not to avoid a sentence that was unduly harsh or excessive. Postconviction, the circuit court rejected this claim. The court found that its remark about avoiding an unduly harsh or excessive sentence was but one of many illuminating the court's sentencing rationale. In light of all of the court's sentencing remarks, which support the exercise of sentencing discretion, we cannot conclude that the court's reference to avoiding an unduly harsh or excessive sentence undermined the exercise of sentencing discretion. Cambridge faced a twenty-five-year term of confinement, *see* WIS. STAT. § 939.50(3)(c); WIS. STAT. § 973.01(2)(b)3. The court imposed five years of confinement, which was neither unduly harsh nor excessive. *Taylor*, 289 Wis. 2d 34, ¶19. The court applied the proper legal standards at sentencing.

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