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DISTRICT II

May 20, 2015

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

2014AP1562-CR State of Wisconsin v. Christopher J. LaBarbera
(L.C. # 2012CF996)

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

Christopher J. LaBarbera appeals from a judgment of conviction and an order denying his motion to modify sentence. He contends that the circuit court erroneously exercised its discretion at sentencing. 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 (2013-14).¹ We affirm the judgment and order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

LaBarbera was convicted following a guilty plea to one count of second-degree sexual assault of a child as a repeater. The charge stemmed from a sexual relationship that LaBarbera had during the summer of 2012 with a minor female who was less than sixteen years old.² Four additional counts of second-degree sexual assault of a child were dismissed and read in.

The circuit court sentenced LaBarbera to ten years of initial confinement followed by six years of extended supervision. LaBarbera subsequently filed a motion to modify sentence, arguing that the court erroneously exercised its discretion at sentencing. Following a hearing on the matter, the court denied his motion. This appeal follows.

On appeal, LaBarbera renews his argument that the circuit court erroneously exercised its discretion at sentencing. Specifically, he complains that the court (1) improperly focused on his violent history; (2) identified too wide a segment of the public that needed protection from him, as he had victimized only one minor female; and (3) “spent very little time discussing the actual facts of the case at sentencing.”

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 LaBarbera was thirty-four years old when the relationship began.

The primary sentencing factors that a circuit court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *Id.*, ¶23. The weight to be given to each sentencing factor is within the discretion of the court. *Id.* The court may consider other relevant factors as well, including the defendant’s past criminal record and history of undesirable behaviors. *Id.*

Here, the circuit court considered the gravity of the offense, LaBarbera’s character, and the need to protect the public. It noted LaBarbera’s violent history, which included threatening his probation agent, gang violence, and convictions for armed robbery and aggravated battery. It further noted LaBarbera’s admission in the presentence report that he found himself attracted to younger women because their bodies are “tight and toned.” Accordingly, the court was skeptical of the chances of rehabilitation and concluded that younger women needed to be protected from LaBarbera.

Reviewing the circuit court’s remarks, we are satisfied that it properly exercised its discretion. The court’s discussion of LaBarbera’s violent history was appropriate, as it involved primary and otherwise permissible sentencing factors. Likewise, the court could reasonably conclude that younger women needed protection from LaBarbera given his stated attraction to them and pattern of acting out on that attraction. Finally, the record belies LaBarbera’s suggestion that the court did not spend enough time discussing the actual facts of the case. The court discussed the crime, LaBarbera’s intent, and the negative consequences of his behavior.

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