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**DISTRICT II**

January 18, 2017

To:

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Circuit Court Judge  
Waukesha County Circuit Court  
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Waukesha, WI 53188

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

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2016AP742-CR

State of Wisconsin v. Britton R. Saunders (L.C. #2014CF810)

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

Britton Saunders pled guilty to two felony counts of exposing genitals or pubic area, contrary to WIS. STAT. § 948.10(1)(a) (2015-16),<sup>1</sup> and two misdemeanor counts of sexual intercourse with a child over sixteen, contrary to WIS. STAT. § 948.09. The sole issue on appeal is whether the circuit court erroneously exercised its discretion in requiring Saunders to register as a sex offender. *See* WIS. STAT. §§ 301.45 and 973.048(1m). Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE

809.21. We affirm the judgment of conviction and the order denying Saunders' motion for postconviction relief.

Shortly after midnight, police observed a car with fogged-up windows parked in an unlit corner of a store's otherwise empty parking lot. Forty-five-old Saunders had been engaging in reciprocal sexual activity with N.P.W., a sixteen-year-old Saunders had mentored in regard to personal struggles, including about his sexual orientation. In addition to jail time, probation, and a withheld sentence, the circuit court ordered Saunders to register as a sex offender. Saunders filed a postconviction motion arguing that the court erred. The court denied the motion after a hearing. Saunders appeals.

Under WIS. STAT. § 973.048(1m), a court may require a person convicted of any crime under WIS. STAT. ch. 948 to comply with the reporting requirements under WIS. STAT. § 301.45. Saunders committed four ch. 948 offenses. It thus was within the court's discretion to require Saunders to register if the court determined that his underlying conduct was sexually motivated, as defined in WIS. STAT. § 980.01(5), and that it would be in the interest of public protection.

We review a circuit court's discretionary decision under the erroneous exercise of discretion standard. *State v. Kivioja*, 225 Wis. 2d 271, 284, 592 N.W.2d 220 (1999). We will uphold a discretionary decision "if the circuit court reached a reasonable conclusion based on the proper legal standard and a logical interpretation of the facts." *Id.* We may look for reasons to sustain a court's discretionary decision. *Hoekstra v. Guardian Pipeline, LLC*, 2006 WI App 245, ¶33, 298 Wis. 2d 165, 726 N.W.2d 648.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

The court “emphatically” concluded there was “no question” but that Saunders’ conduct was sexually motivated. *See* WIS. STAT. § 980.01(5). Saunders complains that the court did not say “exactly ‘why’ the offense was sexually motivated.” He is mistaken. It commented on the numerous electronic messages the two exchanged, that Saunders arranged to meet N.P.W. late at night, supposedly, according to Saunders, to “cuddle,” but “all [the] while ... preparing for [a] potential sexual encounter,” and, specifically, that Saunders took advantage of N.P.W.’s vulnerability for his own sexual satisfaction.

The record sheds more light. N.P.W.’s phone was found to have 380 text messages and sexually graphic pictures and videos he and Saunders had exchanged. Saunders brought pillows and blankets for them to “cuddle” in. “Cuddl[ing]” progressed to kissing, naked fondling, and mutual fellatio. Saunders ejaculated in the boy’s mouth. The intent to become sexually aroused or gratified can be inferred from conduct. *State v. Shanks*, 2002 WI App 93, ¶26, 253 Wis. 2d 600, 644 N.W.2d 275. The record bears out that inference.

Saunders points out that the psychologist who spoke on his behalf at the sentencing hearing opined that he was not a pedophile—an opinion the circuit court endorsed—was unlikely to reoffend, and recommended that he not be on the sex registry. He contends the court should have accepted the psychologist’s opinion as no opposing one was offered. The trier of fact is not required to accept expert testimony, however, even if uncontradicted. *Krueger v. Tappan Co.*, 104 Wis. 2d 199, 203, 311 N.W.2d 219 (Ct. App. 1981). The court amply explained why it deemed Saunders’ conduct to be sexually motivated.

The court examined various factors when determining if requiring Saunders to register as a sex offender would be in the interest of public protection. *See* WIS. STAT. § 973.048(3).<sup>2</sup> It considered the twenty-nine-year age difference between Saunders and N.P.W. and that “you were the adult, he was the child”; the relationship of trust Saunders had with N.P.W. and N.P.W.’s family; that Saunders was aware of N.P.W.’s age and emotional vulnerability; there was no evidence that Saunders’ conduct physically harmed N.P.W., but it exacerbated his prior depression and suicidal thoughts; and, despite Saunders’ prosocial attributes, good character, and educational and employment accomplishments, he still victimized a child, giving the court “a substantial concern with protection of the public moving forward.” Requiring registration was justified to protect the public.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are 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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<sup>2</sup> In determining whether having the person report under WIS. STAT. § 301.45 would be in the interest of public protection, the court may consider any of the following factors: (a) the parties’ ages at the time of the violation; (b) the parties’ relationship; (c) whether the violation resulted in bodily harm, as defined in WIS. STAT. § 939.22(4), to the victim; (d) whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions; (e) the probability that the person will commit future violations; and (g) any other factor the court deems relevant to the case. *See* WIS. STAT. § 973.048(3).