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November 7, 2017

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

2016AP2238-CR State of Wisconsin v. Darrick L. Guider (L.C. # 2015CF1290)

Before Lundsten, P.J., Blanchard and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Darrick Guider appeals from a judgment of conviction and an order denying his postconviction motion for sentence modification. 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 (2015-16).[1] We affirm.

Guider pleaded guilty to first-degree child sexual assault. As part of a plea agreement, the prosecutor agreed to dismiss two charges of witness intimidation and possession of a firearm by a felon. However, these charges were read in for the purposes of sentencing. At sentencing, Guider faced a mandatory minimum sentence of twenty-five years of confinement. The court considered several mitigating factors, including the fact that Guider had accepted responsibility but also considered that his offense had caused lifelong trauma and both of the read-in charges were aggravating factors that reflected negatively on Guider's character. The circuit court sentenced Guider to thirty-five years of initial confinement and twenty years of extended supervision.

Guider subsequently filed a postconviction motion for sentence modification based on a psychological report that Guider contended showed he had a low risk for recidivism. Guider argued that this expert opinion was a new factor, and that the circuit court had erred by placing too much emphasis on the read-in charges. The circuit court denied Guider's motion for sentence modification, concluding that the report was not a new factor. The court explained that the information was not highly relevant to the main factors that influenced the court's sentence, namely, Guider's character, the extremely serious nature of the offense, and the need for strong punishment and deterrence. The circuit court was also troubled that the report suggested that Guider may not have accepted responsibility for his offense, as the circuit court had assumed when sentencing him. Guider appeals.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In his briefs to this court, Guider does not make a developed argument that the circuit court erred in sentencing him or in denying his motion for sentence modification.[2] To the contrary, he concedes that there are record facts to support the circuit court's determinations, which in turn means that the sentence should be upheld under our deferential standard of review. *See* ***State v. Salas Gayton***, 2016 WI 58, ¶20, 370 Wis. 2d 264, 882 N.W.2d 459 (a circuit court's exercise of discretion will be upheld if there are record facts to support the decision). Instead, Guider's main argument is that our decisional law gives circuit courts too much discretion in sentencing. He argues that appellate courts may be in a better position than circuit courts to evaluate the relevant factors. Guider further argues that a less deferential standard of review would be particularly appropriate for cases involving lengthy sentences, such as this one. Guider asks us to conclude that all sentences over a particular length or close to statutory maximums should be reviewed under a less deferential standard.

Guider acknowledges that our supreme court has spoken definitively regarding the proper standard of review for sentencing decisions. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197 ("It is a well-settled principle of law that a circuit court exercises discretion at sentencing" and appellate review "is limited to determining if discretion was erroneously exercised."). Our case law also speaks definitively about the standard to consider whether a circuit court erroneously exercised its discretion in imposing a lengthy sentence. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975) (we may reject a sentence as

[2] Guider argues that two aspects of the circuit court's decision "might" demonstrate an erroneous exercise of discretion. However, he does not explain those contentions or cite any legal authority in support. We therefore reject these arguments as undeveloped. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (This court may decline to consider arguments that are unexplained, undeveloped, or unsupported by citation to legal authority.).

unduly harsh "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"). We therefore reject Guider's argument that we should create a new standard for review of his thirty-five year sentence. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) ("The supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case.").

Guider's sentence was within the statutory maximum for his offense, which was forty years of initial confinement and twenty years extended supervision. A sentence that is well within the maximum "is presumptively *not* unduly harsh or unconscionable." ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507 (emphasis in original). While Guider criticizes ***Grindemann*** as "unenlightened," he concedes that the facts of his case do not support an argument that would overcome this presumption. As a result, we conclude that the circuit court did not erroneously exercise its discretion in sentencing Guider.

Finally, in focusing on the argument that we should alter the standard of review, Guider has abandoned his argument that the psychological report is a new factor requiring modification of his sentence. We therefore affirm the circuit court's order denying his postconviction motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals