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**DISTRICT IV**

May 7, 2018

To:

Hon. David T. Flanagan III  
Circuit Court Judge, Br 12  
Dane County Courthouse  
215 South Hamilton, Rm 8107  
Madison, WI 53703

Hon. Jill Karofsky  
Circuit Court Judge  
Dane County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1875-CR                      State of Wisconsin v. Charles P. Sallay (L.C. # 2015CF1595)

Before Lundsten, P.J., Kloppenburg 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).**

Charles Sallay, by counsel, appeals his judgment of conviction and an order denying his postconviction motion for resentencing.<sup>1</sup> Based upon our review of the briefs and record, we

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<sup>1</sup> The Honorable David T. Flanagan III presided over the plea and sentencing hearing and entered the judgment of conviction. The Honorable Jill J. Karofsky entered the order denying Sallay's postconviction motion.

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>2</sup> We summarily affirm.

Sallay received a sentence of seven years of initial confinement and three years of extended supervision after he pled guilty to attempted second-degree sexual assault of a child under the age of 16. On appeal, Sallay argues that the sentencing court erroneously exercised its discretion because the court failed to adequately state its reasoning on the record and placed undue emphasis on a dismissed charge and a prior conviction and that the sentence imposed is unduly harsh. For the reasons discussed below, we reject these arguments.

Sentencing lies within the circuit court's discretion, and appellate review is limited to considering whether discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court should specify the objectives of the sentence during the sentencing hearing, which “include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, ¶40. The court is not required to explain a sentence with “mathematical precision.” *See id.*, ¶49. Rather, the court should provide “an explanation for the general range of the sentence imposed.” *Id.*

Here, we are satisfied that the circuit court adequately explained the reasons for its sentence. The court stated that protecting the public, especially children, was of primary concern. The court also referenced the seriousness of the offense and the familial relationship between Sallay and the victim, stating: “I just have a hard time getting my mind around a

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

grandparent or stepgrandparent going after a child.” Regarding character, the court stated that Sallay had demonstrated “very, very dangerous” judgment. The court also referenced Sallay’s age, which the record indicates was 51 years old, and stated that it was unlikely that Sallay could control his behavior unless he was given a prison term. Based on all of the above, we are satisfied that the record demonstrates a proper exercise of the circuit court’s sentencing discretion.

Similarly, we are not persuaded by Sallay’s argument that the circuit court gave undue weight to his prior conviction or to the sexual assault charge that was dismissed as part of the plea agreement. Our review of the court’s explanation for the sentence imposed does not reveal any mention of either the dismissed charge or the prior conviction. Even if the court had mentioned those offenses, Sallay acknowledges in his brief that the court was entitled to take those offenses into account. *See id.*, ¶43 & n.11 (“[p]ast record of criminal offenses” and “history of undesirable behavior pattern” are among factors court may consider in the exercise of its sentencing discretion).

Finally, we reject Sallay’s argument that the sentence imposed is unduly harsh. A sentence is unduly harsh and excessive when it 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.” *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Here, the circuit court could have imposed up to twenty years of imprisonment. Instead, the court sentenced Sallay to one-half of the available maximum. There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh, and we are satisfied that the sentence imposed here is not “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.” See *State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted).

IT IS ORDERED that the judgment and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*