



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

July 18, 2018

To:

Hon. Todd K. Martens  
Circuit Court Judge  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095

Theresa Russell  
Clerk of Circuit Court  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095-1986

Mark Bensen  
District Attorney  
Washington County  
P.O. Box 1986  
West Bend, WI 53095-1986

Abigail Potts  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Mark A. Schoenfeldt  
Law Firm of Mark Schoenfeldt  
230 W. Wells St., Ste. 706  
Milwaukee, WI 53203

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

---

2017AP1575-CR

State of Wisconsin v. Tyler J. Hughes (L.C. #2016CF97)

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

**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).**

Tyler Hughes appeals from a judgment convicting him of operating while intoxicated (eighth offense) and from an order denying his postconviction motion seeking 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).<sup>1</sup> We conclude that the circuit court properly exercised its sentencing discretion. We affirm.

Hughes pled guilty to eighth offense operating while intoxicated. The circuit court imposed a nine-year term (four years of initial confinement and five years of extended supervision). In sentencing Hughes, the court considered the gravity of the offense; Hughes's character; rehabilitative needs; his multiple, prior operating while intoxicated convictions; and his failures on supervision. The court also considered aggravating and mitigating factors and the need to protect the public. The court observed that previous sentences had not modified Hughes's behavior, his blood alcohol concentration in this offense was 0.19, and Hughes posed a significant and substantial risk to public safety because he could not refrain from driving after drinking. Although Hughes apologized and expressed remorse, the court did not place great weight on these statements because Hughes's behavior had not changed after multiple convictions and escalating sanctions. To insure that Hughes would not be released early, the court made Hughes eligible for Substance Abuse Program programming after he serves forty-two months of his sentence. As a condition of probation, the circuit court required an ignition interlock device for the entire five years of extended supervision.

Postconviction, Hughes argued that the circuit court erroneously exercised its discretion by imposing the ignition interlock requirement for the five-year extended supervision period, did not give weight to Hughes's expression of remorse, and considered irrelevant facts, including a conviction for battery to a peace officer. The court rejected Hughes's challenge to the ignition

---

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

interlock requirement. The court acknowledged Hughes's remorse but was not required to give it the weight Hughes desired. With regard to the battery conviction, the circuit court noted its ability to consider prior convictions, behavior patterns, and character. The circuit court denied the postconviction motion. Hughes appeals.

We review the circuit court's sentence for an erroneous exercise of discretion. *State v. Loomis*, 2016 WI 68, ¶30, 371 Wis. 2d 235, 881 N.W.2d 749, *cert. denied*, 137 S. Ct. 2290 (2017). The weight to be given to each sentencing factor is within the circuit court's broad discretion. *State v. Thompson*, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992).

On appeal, Hughes complains that the circuit court considered a past battery conviction and failed to consider his apology and expressions of remorse. Past convictions and the degree of remorse are proper considerations at sentencing. *State v. Alexander*, 2015 WI 6, ¶22, 360 Wis. 2d 292, 858 N.W.2d 662. The circuit court was free to place whatever weight it deemed necessary on Hughes's expression of remorse. The circuit court did not misuse its discretion as Hughes claims.

We turn to the circuit court's imposition of an ignition interlock requirement for the entire five-year period of extended supervision. Hughes argues that the ignition interlock requirement is governed by WIS. STAT. § 343.301 and limits the duration of the ignition interlock to thirty-six months. Hughes cites no authority for the proposition that the ignition interlock statute precludes a discretionary decision to impose a lengthier requirement as a reasonable and appropriate condition to further the goals of extended supervision, including the defendant's rehabilitation and protecting the public. *See State v. Agosto*, 2008 WI App 149, ¶¶11-12, 314 Wis. 2d 385, 760 N.W.2d 415; *State v. Stewart*, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165. In light of Hughes's eighth operating while intoxicated conviction and the court's clearly expressed intention to protect

the public, we conclude that the circuit court properly exercised its discretion when it required an ignition interlock for the duration of Hughes's extended supervision.

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.

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

---

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