



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**

August 1, 2018

To:

Hon. Michael P. Maxwell  
Circuit Court Judge  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Susan Lee Opper  
District Attorney  
515 W. Moreland Blvd., Rm. G-72  
Waukesha, WI 53188-2486

Gina Colletti  
Clerk of Circuit Court  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

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

Daniel J. O'Brien  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

---

2017AP2383-CR                      State of Wisconsin v. Pearl L. Labarge (L.C. # 2016CF1575)

Before Reilly, P.J., Gundrum and Hagedorn, 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).**

Pearl L. Labarge appeals from a judgment convicting her of retail theft as a party to the crime and an order of the circuit court denying her postconviction motion. 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 affirm.

---

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

In December 2016, officers stopped a van carrying seven occupants, including Labarge, alleged to have robbed a Menomonee Falls Target store. Video surveillance showed Labarge pushing a shopping cart into which the vehicle's other occupants had deposited some \$768.86 worth of merchandise raided from the shelves of the electronics department. Labarge pled guilty to her role in the theft, and the State agreed to recommend an "unspecified" period of incarceration to run concurrently with another sentence she was already serving.

The circuit court rejected the State's recommendation and imposed a bifurcated sentence of eighteen months' initial confinement followed by eighteen months' extended supervision to be served consecutively to Labarge's current sentence. In fashioning Labarge's sentence, the court considered her character and rehabilitative needs, the gravity of the offense, and the need to protect the public. The court addressed Labarge's character, reasoning that her extensive criminal record spanning two decades could not be ignored. The court considered it unlikely that Labarge would reform if given a lighter sentence, because there was "nothing along the way, probation or otherwise, that has convinced you to stop engaging in this criminal activity." The court also considered Labarge's alcoholism and expressed a desire "to make sure [Labarge] ha[d] the opportunity to get the treatment necessary." The court concluded that "treatment in a confined setting, not a probationary setting" was necessary. The court also noted the serious nature of Labarge's shoplifting, causing other customers having to pay a higher price at retail. Finally, the court considered the need to protect the public from Labarge's persistent criminal conduct and concluded that the three-year sentence was necessary.

We review the circuit court's sentencing decision for an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis.2d 535, 678 N.W.2d 197. The circuit court appropriately exercises its discretion if "it examines the relevant facts, applies a proper standard

of law, uses a ‘demonstrative rational process,’ and reaches a conclusion that a reasonable judge could reach.” *State v. Olson*, 222 Wis. 2d 283, 293, 588 N.W.2d 256 (Ct. App. 1998). The circuit court must additionally give a “rational and explainable basis” for its sentencing decision. *Gallion*, 270 Wis. 2d 535, ¶39 (citation omitted). The sentence carries “a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.” *Id.*, ¶18 (citation omitted). And we will “not substitute our judgment for that of the trial court simply because we might have imposed a different sentence.” *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76. The primary sentencing factors a court must consider are: “(1) the gravity of the offense, (2) the character and rehabilitative needs of the offender, and (3) the need for protection of the public.” *State v. Echols*, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993). The weight to be given to these factors is committed to the circuit court’s discretion. *Ziegler*, 289 Wis. 2d 594, ¶23.

Labarge generally argues that the circuit court’s decision “failed to adequately assess [her] individualized factors.” She says that unlike her co-actors, she accepted responsibility, but the court failed to appropriately give her credit for this. Labarge also suggests the court misapprehended the gravity of the offense because it did not account for Labarge’s minimal role in the crime, claiming that she merely pushed the shopping cart and it was her accomplices who deposited the goods into the cart. Labarge finally complains that the circuit court paid short shrift to her rehabilitative needs, and the court’s decision would actually delay her access to treatment. Her arguments are without merit.

The circuit court made a reasonable sentencing decision and gave a rational and explainable basis on the record. The court here reasonably determined that Labarge’s criminal record and treatment needs necessitated treatment in a confined setting rather than a probationary

setting. The court gave great weight to Labarge's extensive criminal record and noted that she had "reached the point in [her] criminal career" where "a near maximum sentence" was necessary. Despite Labarge's posthoc attempts to minimize her culpability, the fact remains that she pled guilty to retail theft as party to a crime. She was no mere "sacrificial lamb" as she suggests, but an intentional participant in the theft. Labarge's arguments are an invitation for us to reweigh the sentencing factors and substitute our judgment for the circuit court. We decline to do so.

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*