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July 3, 2019

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

2018AP862-CR State of Wisconsin v. Fredrick S. Pickett (L.C. #2016CF25)

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).

Convicted by a jury of two counts of second-degree sexual assault of a child, Fredrick Pickett appeals from the judgment of conviction and from an order denying his postconviction motion to vacate the requirement that he register as a sex offender pursuant to WIS. STAT.

§ 301.45 (2017-18).¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Because the circuit court properly exercised its discretion when it denied Pickett’s motion to be excepted from mandatory sex offender registration, we affirm.

At sentencing, Pickett maintained his innocence and acknowledged that he faced mandatory sex offender registration. The circuit court found that Pickett manipulated the victim into sexual activity, committed serious offenses, and continued to diminish his conduct and responsibility. The court placed great weight on the need to protect the public because Pickett had a substantial prior offense history, and he was on supervision when he committed the two counts of sexual assault. The court ordered Pickett to comply with sex offender registration and imposed concurrent twelve-year sentences.

A conviction for second-degree sexual assault of a child makes sex offender registration mandatory under WIS. STAT. § 301.45 “unless the court determines, after a hearing on a motion made by the [defendant], that the [defendant] is not required to comply under [§] 301.45(1m).” WIS. STAT. § 973.048(2m).

Postconviction, Pickett moved the circuit court to be excepted from the registration requirements. WIS. STAT. § 301.45(1m)(b). Pickett had the burden to prove by clear and convincing evidence that he satisfied all of the criteria for an exception. Sec. 301.45(1m)(e). In deciding whether to except a defendant from sex offender registration, the court may consider numerous factors: the ages of the child victim and the defendant and their relationship at the

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

time of the sexual assault, whether the victim suffered bodily harm, whether the child victim has a mental illness or deficiency that rendered the child incapable of understanding or evaluating the consequences of his or her actions, the probability that the defendant will commit other violations in the future, the expert's examination report, and any other factor deemed relevant by the court. Sec. 301.45(1m)(e)1.-7. In dispute is whether Pickett proved that protection of the public does not require that he register as a sex offender. Sec. 301.45(1m)(a)1m.d.

Whether to except Pickett from sex offender registration was within the circuit court's discretion. *State v. Joseph E.G.*, 2001 WI App 29, ¶11, 240 Wis. 2d 481, 623 N.W.2d 137 (2000). We will affirm a circuit court's discretionary decision if the decision has a reasonable basis and the circuit court reached its conclusion in accordance with accepted legal standards and the facts of record. *See State v. LaCount*, 2008 WI 59, ¶15, 310 Wis. 2d 85, 750 N.W.2d 780.

After Pickett had a psychosexual evaluation, the circuit court held a hearing on Pickett's motion to be excepted from sex offender registration. The psychosexual evaluator reported that the results of his assessment led him to conclude that Pickett's profile was not consistent with that of a sexual predator. The evaluator further noted that Pickett will be under supervision for several years and will receive outpatient sex offender education. Based on the foregoing, the evaluator opined that registration was not necessary to protect the public. However, if Pickett does not abide by court orders or terminates his offender education before completion, then he should be required to register.

Pickett argued that the psychosexual evaluation supported his request to be excepted from registration. The State argued that by not taking responsibility for his conduct, Pickett remained a danger to engage in such behavior in the future.

The circuit court noted the evaluator's statement that if Pickett fails to comply while on supervision, steps could be taken to obtain his compliance. The court was concerned that it would not learn of a compliance issue such that the court could impose registration at that time. The court also noted that the registration requirement extends beyond 2028, the end of Pickett's supervision, and the court was concerned about the ability to impose registration after Pickett completes his term of supervision. The court preferred not to wait to see if Pickett fails on supervision before requiring him to register, particularly because not all aspects of Pickett's noncompliance, if any, would necessarily be brought to the court's attention. The court observed that Pickett could request an exception from registration once he completes outpatient education and complies with the terms of his supervision. Pickett appeals.

Relying on the evaluator's report and information adduced during trial testimony, Pickett argues that he satisfied the criteria for being excepted from registration. After considering all of the arguments on appeal, we conclude that the circuit court properly exercised its discretion when it denied Pickett's motion. The court considered the report and the sentencing and weighed the WIS. STAT. § 301.45(1m)(e)1.-7. factors differently. The court clearly did not accept the psychosexual evaluator's opinion that public protection did not require Pickett to register as a sex offender. The court placed greater weight on the need to protect the public and considered other appropriate factors including Pickett's lengthy prior history, his failure to take responsibility for his conduct, and his ability to raise the registration issue once he completes his sex offender education and complies with the terms of his supervision.

Pickett did not meet his burden to show that he should be excepted from the sex offender registration requirement. The circuit court had a rational basis for its decision to deny Pickett's motion to be excepted from registration.

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