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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

DISTRICT I

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To:

Hon. Mark A. Sanders
Circuit Court Judge
821 W. State St., Rm. 620
Milwaukee, WI 53233-1427

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
821 W. State Street, Rm. 114
Milwaukee, WI 53233

Tiffany M. Winter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Esther Cohen Lee
Hall, Burce and Olson, S.C.
759 N. Milwaukee St., Ste. 410
Milwaukee, WI 53202

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

2019AP189-CR State of Wisconsin v. Clinton O. Linzy (L.C. # 2016CF3067)

Before Brash, P.J., Kessler and Dugan, 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).

Clinton O. Linzy appeals a judgment convicting him of six felonies. He also appeals a postconviction order denying modification of his aggregate seventy-nine-year term of imprisonment. He claims that the circuit court imposed an unduly harsh or excessive sentence.

Upon our review of the briefs and record, we conclude that this matter is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).[1]

According to the criminal complaint, Linzy engaged in multiple acts of sexual intercourse with a fourteen-year-old girl, A.M.S., after inviting her into his home in July 2016. A.M.S. subsequently returned to his home with her mother, M.S. When they entered, Linzy seized them at gunpoint and held them captive overnight. The police eventually rescued A.M.S. and M.S. and arrested Linzy. A subsequent search of his cellphone uncovered video recordings of Linzy engaging in sexual acts with A.M.S. The State ultimately charged Linzy with one count of second-degree sexual assault of a child younger than sixteen years old, possession of a firearm while a felon and as a repeat offender, two counts of false imprisonment by use of a dangerous weapon and as a repeat offender, and two counts of possessing child pornography. Following a jury trial, he was convicted as charged.

As a result of the six convictions, Linzy faced an aggregate 134-year term of imprisonment, specifically: (1) a maximum forty-year term of imprisonment for second-degree sexual assault of a child, *see* WIS. STAT. §§ 948.02(2), 939.50(3)(c); (2) a maximum fourteen-year term of imprisonment for each count of possessing a firearm while a felon and as a repeat offender, *see* WIS. STAT. §§ 941.29(1m)(a), 939.50(3)(g), 939.62(1)(b); (3) a maximum fourteen-year term of imprisonment for each count of false imprisonment by use of a dangerous weapon as a repeat offender, *see* WIS. STAT. §§ 940.30, 939.50(3)(h), 939.62(1)(b), 939.63(1)(c); and

[1] Because Linzy committed the crimes in this case when the 2015-16 Wisconsin Statutes were in effect, all subsequent references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(4) a maximum twenty-five-year term of imprisonment for each count of possessing child pornography, *see* WIS. STAT. §§ 948.12(1m), (3)(a), 939.50(3)(d). Further, Linzy faced a mandatory minimum three-year term of initial confinement for each count of possessing child pornography. *See* WIS. STAT. § 939.617.

At sentencing, the State recommended that the circuit court impose the maximum aggregate term of imprisonment. In support of the recommendation, the State highlighted the gravity of the offenses and Linzy's extensive criminal history, emphasizing that Linzy was "actually on parole for a homicide" at the time he committed the crimes in this case. Linzy's trial counsel did not make a specific sentencing recommendation but asked the circuit court to impose a sentence "significantly less" than the State proposed in light of Linzy's age—sixty-one years old at the time of sentencing—his poor health, including the stroke that he had recently suffered, his difficult upbringing, and a history of family tragedies. Linzy himself exercised his right to allocution, asserting that he "d[id] nothing ... to the young girl" and suggesting that he had merely tried to help someone who turned out to be younger than she appeared.

The circuit court discussed numerous considerations relevant to its sentencing decision and ultimately denied the State's request for a maximum sentence because the recommendation did not "take[] into consideration [Linzy's] health or [his] age." The circuit court concluded, however, that "a significant sentence is absolutely necessary." The circuit court therefore sentenced him as follows:

> ● for second-degree sexual assault of a child, a thirty-five-year term of imprisonment, bifurcated as twenty-five years of imprisonment and ten years of extended supervision, consecutive to any other sentence;

- for possessing a firearm while a felon as a habitual offender, a consecutive evenly bifurcated ten-year term of imprisonment;

- for each of the two convictions for false imprisonment by use of a dangerous weapon as a habitual offender, a fourteen-year term of imprisonment bifurcated as eleven years of initial confinement and three years of extended supervision, each sentence concurrent with the other but consecutive to the sentence for possessing a firearm; and

- for each of the two convictions for possessing child pornography, an evenly bifurcated twenty-year term of imprisonment, each sentence concurrent with the other but consecutive to the sentences for false imprisonment.

Linzy thus received an aggregate seventy-nine-year term of imprisonment bifurcated as fifty-one years of initial confinement and twenty-eight years of extended supervision.

Linzy filed a postconviction motion alleging that his aggregate sentence was unduly harsh and excessive because the circuit court did not give adequate consideration to his health, specifically, the debilitating effects of the stroke he suffered while in jail. The circuit court rejected his claim, and Linzy appeals.

A sentence is unduly harsh only if its length 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." ***State v. Davis***, 2005 WI App 98, ¶15, 281 Wis. 2d 118, 698 N.W.2d 823 (citation omitted). When a defendant challenges a sentence claiming it is unduly harsh or unconscionable, the circuit court initially determines whether it properly exercised its sentencing discretion when imposing the original sentence. *See* ***State v. Klubertanz***, 2006 WI App 71, ¶¶32, 44, 291 Wis. 2d 751, 713 N.W.2d 116.

The framework for a proper exercise of sentencing discretion is long settled. *See* ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court must specify the sentencing objectives on the record. *See* ***id.*** In seeking to fulfill the sentencing objectives, the circuit court is required to consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community, *see* ***Gallion***, 270 Wis. 2d 535, ¶43 & n.11, but the selection of relevant factors and the weight to assign to them rests within the circuit court's discretion, *see* ***State v. Stenzel***, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20.

On appeal, "'[w]e review a [circuit] court's conclusion that a sentence it imposed was *not* unduly harsh and unconscionable for an erroneous exercise of discretion.'" *See* ***State v. Cummings***, 2014 WI 88, ¶45, 357 Wis. 2d 1, 850 N.W.2d 915 (citations and one set of quotation marks omitted). We search the entire record for reasons to sustain the sentence imposed. *See* ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971). We will not disturb the circuit court's exercise of sentencing discretion if the record reflects that the circuit "court applied the proper legal standards to the facts before it, and through a process of reasoning, reached a result which a reasonable judge could reach." *See* ***Cummings***, 357 Wis. 2d 1, ¶75 (citation omitted).

Here, the record of Linzy's sentencing reveals that the circuit court identified appropriate sentencing objectives, namely punishment, protection of the community, and deterrence. *See* ***Gallion***, 270 Wis. 2d 535, ¶40. The circuit court then explained the sentencing factors that it deemed relevant to those objectives.

The circuit court discussed the gravity of the offenses, observing that Linzy had committed “a whole series” of crimes that included victimizing “a vulnerable young girl,” and the circuit court found that the offenses were aggravated “because of [the child’s] age.... They’re aggravated because of the presence of a gun. They’re aggravated because [Linzy] videotaped some of the sexual encounters.”

The circuit court discussed Linzy’s character, beginning with a finding that Linzy had been convicted of ten crimes over forty years, including four felony-level batteries, four offenses involving weapons, and two homicides. *See* ***State v. Fisher***, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (substantial criminal record that spans many decades is evidence of character). The circuit court further found that Linzy had been imprisoned for a substantial portion of his adult life and that he committed the instant offenses within thirteen months of his 2015 release from Illinois custody after spending twenty-three years in prison serving a sentence for homicide. The circuit court determined that “the best that [it] c[ould] say about [his] character, candidly, is that [it]’s challenging.”

Turning to mitigating factors, the circuit court recognized that Linzy grew up in “notorious” Chicago public housing and that he had experienced substantial family tragedy, including the death of three sisters. The circuit court also found that Linzy did not have substance abuse problems, and the circuit court commended him for his employment history, which reflected that he had “work[ed] hard” during some periods of his life.

Next, the circuit court noted that Linzy appeared for sentencing in a wheelchair and found that his “physical health is not good.” The circuit court acknowledged that Linzy had a stroke while in custody, and the circuit court then detailed on the record the many other health

problems plaguing him, specifically, chronic obstructive pulmonary disease, asthma, glaucoma, high blood pressure, and diabetes. The circuit court went on to observe, however, that Linzy appeared to view his criminal conduct as justified and found that "in spite of [his] age and in spite of [his] health, [his] history tells me that there's a pretty good likelihood that [Linzy] would continue to commit crimes."

The circuit court found that the need to protect the public was "straightforward." Specifically, the community required "protection from [Linzy]" and "also broader protection.... [T]here has to be a clear message sent that when one sexually victimizes vulnerable fourteen-year-olds ... there's a serious consequence. The public has a strong interest in the protection of particularly vulnerable children."

In challenging his sentences as unduly harsh, Linzy relies on a claim that any future criminal activity on his part is a "virtual impossibility" following his stroke, which he says left him "paralyzed on his left side and [unable to] walk." In his view, his aggregate sentence is therefore unduly harsh and excessive because the circuit court "fail[ed] to adequately ... take into account ... that he was no longer a threat to the community." We are not persuaded.

First, the record does not demonstrate that Linzy no longer poses a threat to others. As the circuit court pointed out, his criminal history includes multiple weapons offenses. Therefore, even if he is now unable to commit precisely the same crimes as those he committed in this case,

his pattern of behavior, which involved weapons and violence, has not necessarily been disrupted by his current physical limitations.[2]

Second, we reject any suggestion that the circuit court did not "adequately" take Linzy's health into account. The circuit court plainly acknowledged throughout the sentencing hearing that Linzy was ill and carried multiple diagnoses. His health, however, was only one of the factors that the circuit court considered, and, as Wisconsin law allows, the circuit court ultimately chose not to give overriding weight to his health and diminished physical capacity in light of the myriad other concerns relevant to the sentencing decision. *See* ***Stenzel,*** 276 Wis. 2d 224, ¶16. Instead, the circuit court explained that it sought to "punish [Linzy] for the crimes he committed and remove him from the community for a substantial period of time in light of his horrendous criminal history ... and his inability to conform his conduct." The circuit court also sought to deter any "others who may wish to commit crimes of this nature." The circuit court had discretion to prioritize these sentencing objectives and was not limited to ensuring that Linzy was unable to repeat the specific sexual assault and false imprisonment offenses he committed in this case. *Cf.* ***Gallion***, 270 Wis. 2d 535, ¶40.

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[2] We observe that the medical records Linzy provided in support of his postconviction motion are of limited value and do not paint the picture of abject helplessness that he seeks to project. The documents describing the physical examination and medical classification he received in prison reflect restricted use of his limbs, weakness on his left side, and limited mobility that confines him to a wheelchair. This is not a description of incapacitating paralysis. The only other medical record Linzy provided with his motion was a document titled "Psychiatric Report–Follow-Up," signed by an advanced practice nurse. The purpose of the follow-up examination was management of Linzy's psychiatric medication. In memorializing the examination, the nurse documented Linzy's self-report of "left-sided paralysis" due to a stroke, and the nurse included the clearly incorrect notation: "stroke with left-sided paralysis since 2015."

Third, the circuit court imposed an aggregate term of seventy-nine years of imprisonment, far less than the 134 years that Linzy faced. An aggregate sentence that does not exceed the aggregate maximum sentence allowed by law is not excessive. *See* ***State v. Mursal***, 2013 WI App 125, ¶26, 351 Wis. 2d 180, 839 N.W.2d 173. Here, the aggregate sentence that Linzy received was only a little more than half the maximum that could have been imposed. The aggregate sentence was thus neither shocking nor disproportionate. *See* ***State v. Berggren***, 2009 WI App 82, ¶¶47-48, 320 Wis. 2d 209, 769 N.W.2d 110.

In sum, the circuit court did not impose harsh or unconscionable sentences in this case. The circuit court identified reasonable objectives, considered relevant aggravating and mitigating factors, and did not consider any improper factors. The sentences imposed were lawful and within the statutory maximums. As we have previously observed:

> Although ... [circuit] courts should impose "'the minimum amount of custody'" consistent with the appropriate sentencing factors, "minimum" does not mean "exiguously minimal," that is, insufficient to accomplish the goals of the criminal justice system—each sentence must navigate the fine line between what is clearly too much time behind bars and what may not be enough.

State v. Ramuta, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483 (internal citation and one set of quotation marks omitted). The circuit court properly navigated that line here.

IT IS ORDERED that the judgment and postconviction order are summarily affirmed. *See* WIS. STAT. RULE 809.21 (2017-18).

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

Sheila T. Reiff
Clerk of Court of Appeals