



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

DISTRICT IV

June 10, 2021

To:

Hon. Richard A. Bates
Circuit Court Judge
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Hon. Derrick A. Grubb
Circuit Court Judge
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Perry L. Folts
Deputy District Attorney
51 S. Main St.
Janesville, WI 53545

Eric Michael Muellenbach
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

Jefren E. Olsen
Assistant State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

2020AP564-CR

State of Wisconsin v. W.A.H. (L.C. # 2017CF280)

Before Blanchard, Kloppenburg, and Nashold, 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).

W.A.H.¹ appeals a judgment of conviction and an order denying his postconviction motion.² The issue is whether the sentencing court erroneously exercised its discretion. We conclude that it did not, and therefore we affirm. 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.

W.A.H. was convicted of one count of incest with a child by a stepparent. The court imposed a sentence of ten years of initial confinement and four years of extended supervision. W.A.H. filed a postconviction motion, which the circuit court denied.

The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis.2d 535, 678 N.W.2d 197.

W.A.H. concedes that the overall length of the sentence is appropriate, but argues that the circuit court erred in how it apportioned the sentence between initial confinement and extended supervision. He argues that the court gave too much weight to W.A.H.'s bad conduct in "private" and not enough weight to his positive accomplishments in "public" that show he is likely to succeed in rehabilitation and pose a low risk to reoffend. As a result, he argues, the court failed to impose the minimum amount of confinement time necessary to achieve its

¹ We use only the defendant's initials to preserve victim confidentiality. *See* WIS. STAT. RULE 809.86 (2019-20).

All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² The Honorable Richard A. Bates presided at sentencing. The Honorable Derrick A. Grubb denied the postconviction motion.

objectives of rehabilitation and protection of the public. W.A.H. argues five specific ways in which the court erred in weighing the factors.

First, W.A.H. argues that the court downplayed his long period of steady employment, community activity, and military service, which W.A.H. asserts “bode well for rehabilitation and compliance with the law.” The obvious problem with this argument is that W.A.H.’s own conduct history demonstrates that there is not necessarily any connection between a person’s “public” accomplishments and his or her law compliance. The circuit court noted what it described as W.A.H.’s twenty-year period of abuse of family members and that he “managed to get away with it without being arrested and convicted for any of those acts.” W.A.H. does not dispute this description of his history on appeal.

As to whether W.A.H.’s “public” accomplishments bode well for rehabilitation, he points to nothing specific in the record that suggests predictive connection between his accomplishments and rehabilitation. Furthermore, the circuit court concluded that W.A.H. would be resistant to treatment. The court reached that conclusion based on W.A.H.’s allocution that focused mainly on his positive accomplishments, on W.A.H.’s lack of willingness to take responsibility for his criminal conduct, and on his “distorted view of his sexual responsibility and what is underage consent.”

The circuit court in its discretion could reasonably decide that these specific factors are likely to have greater predictive value than W.A.H.’s general record of accomplishment in other areas of life. W.A.H.’s argument on appeal fails to establish that the sentencing court’s assessment of his rehabilitation potential was based on improper considerations or inaccurate information.

Second, W.A.H. argues that the availability of conditions for supervision and of post-confinement treatment would “force” the positive, “public” side of W.A.H. to predominate and, therefore, some of the confinement portion of his sentence can be replaced with supervision. This argument is, essentially, only speculation about the potential effect of supervision and treatment on W.A.H. Supervision and treatment are not sufficient for all offenders. For reasons we have already discussed, the circuit court articulated reasonable grounds to be skeptical about their effectiveness with W.A.H. His argument does not show that the circuit court failed to give sufficient weight to the availability of supervision and treatment.

Third, W.A.H. argues that the fact that his allocution focused on his positive accomplishments does not “necessarily” indicate a difficult process of rehabilitation, because this is a natural human response that treatment providers can address. W.A.H. may be correct that his allocution does not “necessarily” indicate difficult rehabilitation, but W.A.H. does not appear to dispute that the circuit court had a reasonable basis to think that it may indicate difficulty. W.A.H.’s argument is far from a showing that the court erred by inferring that his allocution suggests an increased possibility of resistance to rehabilitation.

Fourth, W.A.H. argues that, while it is true that his good conduct cannot be used to balance bad conduct, it is also true that his bad conduct cannot cancel out the good. The record does not show a basis to conclude that the circuit court disregarded W.A.H.’s positive conduct in fashioning a sentence using its sentencing discretion. The court imposed only ten of the available twenty-five years of initial confinement. The court specifically explained that it would not be imposing the maximum sentence because it was not finding that W.A.H. could not be rehabilitated. It appears likely that W.A.H.’s positive conduct played a role in this assessment, and in his not receiving a longer sentence.

Finally, W.A.H. argues that a more balanced weighing of his positive and negative attributes should lead to a sentence with less confinement time and more supervision. This is essentially a summation of his previous arguments, all of which we have rejected.

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 ORDER that this summary disposition will not be published.

Sheila T. Reiff
Clerk of Court of Appeals