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 I

November 23, 2021

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

John D. Flynn
Electronic Notice

Michael C. Sanders
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Christopher D. Sobic
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You are hereby notified that the Court has entered the following opinion and order:

2020AP47-CR State of Wisconsin v. Garrett M. Klumb (L.C. # 2018CF1695)

Before Brash, C.J., Donald, P.J., and White, 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).

Garrett M. Klumb appeals from a judgment of conviction and from an order denying his postconviction motion for resentencing. Klumb argues the circuit court failed to adequately explain why it imposed the maximum sentence. 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 (2019-20).[1] The judgment and order are summarily affirmed.

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

Klumb was charged with one count of first-degree sexual assault by intercourse with a child under twelve years of age, based on allegations from his girlfriend's ten-year-old daughter that Klumb would "lick her private." This offense is a Class B felony with a maximum term of sixty years' imprisonment; there is also a mandatory minimum of twenty-five years' initial confinement. *See* WIS. STAT. §§ 948.02(1)(b); 939.50(3)(b); 939.616(1r). Klumb agreed to plead guilty to one count of first-degree sexual assault of a child under age thirteen, a Class B felony with no mandatory minimum term. *See* §§ 948.02(1)(e); 939.50(3)(b).

At sentencing, the State recommended substantial prison without specifying a term length, and Klumb asked for the minimum amount of confinement necessary. The circuit court imposed the maximum sentence of forty years' initial confinement and twenty years' extended supervision. Klumb filed a postconviction motion, seeking either sentence modification because the sentence was unduly harsh or resentencing because the circuit court erroneously exercised its sentencing discretion. The circuit court denied the motion, and Klumb appeals. On appeal, Klumb has abandoned the harshness argument.

The appellate standard of review of a circuit court's sentencing decision is well-established: we limit our review to determining whether the circuit court appropriately exercised its discretion. *See* ***State v. Klubertanz***, 2006 WI App 71, ¶20, 291 Wis. 2d 751, 713 N.W.2d 116. To appropriately exercise its discretion, the circuit court should consider objectives including protection of the community, punishment and rehabilitation of the defendant, and deterrence to others. *See* ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. In crafting a sentence to fulfill these objectives, the circuit court is to consider the facts relevant to those objectives, including the gravity of the offense, the defendant's personal and criminal history, and any aggravating or mitigating factors. *See* ***id.***, ¶¶40 n.10, 43 n.11. The relative

weight assigned to each factor and objective is left to the circuit court. *See* ***State v. Stenzel***, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20. Any sentence imposed "'should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.'" *See* ***Gallion***, 270 Wis. 2d 535, ¶23 (citation omitted).

Here, Klumb does not contend that the circuit court failed to consider necessary and appropriate factors or explain its sentencing objectives. Rather, he asserts that the circuit court "failed to explain how or why a maximum sentence was the minimum amount of time necessary and appropriate in this case." We disagree.

Klumb's victim described him as her stepfather. Klumb assaulted her over a period of months when he was left in charge of the victim and her two younger half-siblings, whom Klumb had fathered. The victim had become suicidal as a result of Klumb's actions, and the crime also negatively impacted the victim's mother and her two half-siblings. The circuit court thus characterized Klumb's offense as "extraordinarily serious."

Klumb's criminal record, though limited, involved prior sex offenses. He had been convicted of two counts of possession of child pornography in Wyoming; 114 images of child pornography had been recovered from his phone. Klumb received a seven-year sentence, imposed and stayed for a term of probation, but the probationary sentence was revoked. Less than nine months after Klumb was released to the extended supervision portion of that sentence, he began having sex with a sixteen-year-old he had met at a support group meeting. Klumb's supervision was revoked. Approximately six months after being released from the revocation sentence, Klumb began the assaults in this case. Further, although Klumb had completed sex

offender treatment once and started it a second time, he nevertheless confirmed that he continued to have sexual fantasies involving teenage or prepubescent girls. Thus, the circuit court noted that Klumb had a "history of damaging and sexually taking advantage of children," necessitating protection of the public as well as deterrence to "other people … who would victimize children."

Based on the foregoing, the circuit court specifically stated that it considered its sentence to be "the minimum amount necessary to protect the public in this case, to acknowledge the serious nature of [the] offense, and to recognize the nature of [Klumb's] character," notwithstanding a few positive aspects that had been identified. While the circuit court "must provide an explanation for the general range of the sentence imposed," it is not required to explain the "precise number of years chosen," nor must it explain "why it did not impose a lesser sentence." *See* ***State v. Davis***, 2005 WI App 98, ¶26, 281 Wis. 2d 118, 698 N.W.2d 823. Here, the circuit court observed and considered multiple factors, unique to this case, and identified appropriate sentencing objectives that amply justify imposition of the maximum sentence. We discern no erroneous exercise of discretion.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* 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