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 II

June 29, 2022

To:

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Electronic Notice

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

2021AP949-CR State of Wisconsin v. Michael G. Arendt (L.C. #2016CF683)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Michael G. Arendt appeals from a judgment of conviction and an order denying his postconviction motion. He claims the circuit court erroneously exercised its discretion in ordering him to comply with sex offender registration and in declining to defer a decision on registration until after the completion of his 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] For the following reasons, we affirm.

Arendt was criminally charged with one count of using a computer to facilitate a child sex crime, in violation of WIS. STAT. § 948.075(1r), and one count of child enticement: fictitious child, in violation of WIS. STAT. § 948.07(1). He ultimately pled no contest to one count of conspiracy to commit "[e]xposing genitals, pubic area, or intimate parts" to a child, in violation of WIS. STAT. §§ 939.31 and 948.10(1) and (1)(a), and one count of conspiracy to commit soliciting an intimate representation from a minor, in violation of WIS. STAT. §§ 939.31 and 942.09(4)(a). At sentencing, the court withheld sentence on both counts, placed Arendt on probation, and ordered him to serve six months of conditional jail time. The court also ordered him to comply with the sex offender reporting requirements of WIS. STAT. § 973.048(1m). Arendt's probation was later revoked and he was ordered to serve prison time followed by extended supervision. He subsequently filed a postconviction motion arguing that the court erroneously exercised its discretion by ordering him to comply with sex offender registration. The circuit court denied his motion, and he now appeals.

Arendt acknowledges that the circuit court "made the necessary findings in ordering him to comply" with the sex offender reporting requirements, but contends the court erroneously exercised its discretion in so ordering, including contending that the court did not give sufficient weight to materials he submitted suggesting he did not pose a significant risk to reoffend. He claims it was in "reasonable dispute" as to whether his offense was sexually motivated.

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

"We review a circuit court's sentencing decision for an erroneous exercise of discretion." ***State v. Jackson***, 2012 WI App 76, ¶7, 343 Wis. 2d 602, 819 N.W.2d 288. Furthermore, "we are obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained. It is ... our duty to affirm the sentence on appeal if from the facts of record it is sustainable as a proper discretionary act." ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

WISCONSIN STAT. § 973.048(1m) provides that for the violations to which Arendt pled and of which he was convicted, a circuit court "may require the person to comply with" the sex offender reporting requirements of WIS. STAT. § 301.45 "if the court determines that the underlying conduct was sexually motivated, as defined in [WIS. STAT. §] 980.01(5), and that it would be in the interest of public protection to have the person report under [§] 301.45." Section 980.01(5) provides that "'[s]exually motivated' means that *one* of the purposes for an act is for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim." (Emphasis added.)

The circuit court found that Arendt was sexually motivated in committing the offenses, but Arendt asserts the court failed to address "whether the conversations [between him and the undercover agent] and [Arendt's] appearance at the meeting place were *really* motivated by a desire for sexual arousal or gratification." Arendt suggests that it is possible he instead may have engaged in the conduct at issue due to "depression, loneliness, and negative self-image." He claims "the factual record provides little basis to support the court's finding." Quite the contrary, the record strongly supports the finding.

The criminal complaint, which was used as the factual basis for Arendt's conviction, identifies that on or about November 30, 2016, analyst Michael Sewall began an undercover, online investigation, posing as a fourteen-year-old female posting "I wanna do something crazzzzzzzy!!! Sick of being bored all the time." Arendt responded, "[W]hat kind of crazy are you looking for?" With Sewall continuing to pose as a fourteen-year-old girl, Arendt and Sewall then began conversing, and Arendt "began bringing up sexual acts stating they could cuddle, make out, and 'go from there.'" The complaint continues:

> Analyst Sewall asked [Arendt] what else would happen if they got together to which [Arendt] replied, "I'd start with holding you close, we start to kiss, I'd gently suck and pull on your lower lip with my lip …, kiss your neck … run my hands up and down your back … give your buns a squeeze with a big strong hand … I'd pull you in good and close and let your hand go where they wanted on me as a switch-off." Analyst Sewall asked [Arendt], "U care I'm 14?" [T]o which [Arendt] stated, "Fun's fun—as long as your're okay and it's just us, I'm good," followed by, "that's how you're supposed to get the other person good and horny". [Arendt] asked, "[Y]ou clean and on protection? Or do you need me to suit up?" [Arendt] brought up meeting for the first time stating, "[P]ick you up after work? I can make my car seats into a bed".
>
> Analyst Sewall reports that on December 5, 2016 he tells [Arendt] that he had a plan to get out of the house Wednesday night. Analyst Sewall asks [Arendt] … for more details on what will occur. [Arendt] states, "I'd slowly work down the more you go into things. Rub over your clothes, then if you gave me the impression that you like it, we'd remove layers. I use my hands and would play with your clit and massage your g-spot. While you're enjoying yourself, you can play with whatever you want. And when you're ready, I'll put a condom and show you an even better time!" Analyst Sewall asked [Arendt] what he meant by that and the defendant replied, "[W]e'll bang. Long, hard".
>
> Analyst Sewall reports that he and [Arendt] arranged to me[et] at the US Post Office located at 8284 County Hwy T, in Larsen, Winnebago County, Wisconsin on December 7, 2016.
>
> Detective Brian Hammen reports that on December 7, 2016 he parked at the Post Office and observed [Arendt's] vehicle pull into the co-op gas station directly west of the Post Office.

Arendt had brought condoms along with him.

There can be no question that the record supports the circuit court's finding that Arendt's conduct was sexually motivated as there is no question that at least "one" of the purposes for his conduct was for his sexual arousal and/or gratification. Moreover, as to the count for conspiracy to commit exposing genitals, intimate parts, or pubic area, one of the *elements* that Arendt *pled to* was that his conduct was done "for the purpose of sexual arousal or sexual gratification." *See* WIS JI—CRIMINAL 2140.

Arendt also contends that the circuit court erred in finding that having him register as a sex offender was in the interest of public protection. We conclude that the court did not err. The court explained that the factual basis for Arendt's crimes was "very concerning" and "very serious," noting that Arendt was "attempting … to exploit young people sexually." It also found the age discrepancy between Arendt and the fictitious girl to be significant as Arendt was more than twice her age. We agree on both fronts. This was not an eighteen-year old young man with a seventeen-year old young woman, but a thirty-four year old man attempting to lure a fourteen-year-old girl into engaging in sex with him. The court correctly determined that having him register as a sex offender was in the interest of public protection.

Arendt contends that as a matter of public policy, sex offender registration does more harm than good for the public. He claims the court erred by failing to consider "the adverse effects that registration has on the individual, and the lack of evidence in the record that sex offender registration serves to protect the public or prevent recidivism in any significant way." He complains that the court did not articulate on the record consideration as to whether "the benefits" of sex offender registration in general "outweigh the costs."

What Arendt really complains about in this regard are public policy decisions made by the legislature—that the legislature chose to allow circuit courts the option of ordering sex offender registration in sentencing a defendant. A sentencing court does not err by failing to articulate whether it believes sex offender registration in general is good public policy for Wisconsin. Here, the court properly considered the age difference between Arendt and the fictitious victim and the nature of the offenses in determining it is in the interest of public protection to have Arendt register as a sex offender.

As for Arendt's contention that the circuit court did not give enough weight to the information he presented at sentencing suggesting he did not pose a significant risk to reoffend, we note that the weight a court gives to particular considerations in sentencing a defendant "is a determination particularly within the discretion of the [circuit] court." *See* ***State v. Davis***, 2005 WI App 98, ¶13, 281 Wis. 2d 118, 698 N.W.2d 823. Here, the court clearly indicated that it had reviewed the materials submitted by Arendt for sentencing consideration. That the court did not find Arendt's submissions to be as compelling as Arendt wishes is not an indication of error by the court—again, the weight to be given to such evidence is up to the court. We see no error here as other material in the record, which we have already identified, strongly supports the court's finding that his actions were sexually motivated and that it was in the public interest to have him register as a sex offender.

Lastly, Arendt also complains that the circuit court did not grant his request to "defer its determination regarding the sex offender registry until after the completion of his sentence." His arguments, again, are geared toward general public policy decisions for the legislature as he asserts as a general matter that deferral, assuming such an option is lawful under WIS. STAT. § 973.048(1m)(a), "would seem to be the most inherently logical approach" in all cases because

"[i]t would seem difficult to dispute the assertion that such a determination would be most accurate if made *after* a defendant has completed a sentence and undergone the counseling and treatment that is required." Furthermore, Arendt fails to support his position with legal authority, and we do not consider arguments unsupported by legal authority. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d. 633 (Ct. App. 1992). Additionally, and significantly, as the State points out, the circuit court "determined that, in the interest of public protection, Arendt must register. The court then placed Arendt on probation, meaning he would remain in the community." The court certainly did not erroneously exercise its discretion in trying to ensure that the goal of public protection is met while it allowed Arendt to remain in the community on probation.

IT IS ORDERED that the judgment and order of the circuit court is 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