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DISTRICT I

August 30, 2022

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

2020AP1276-CR

State of Wisconsin v. Richard N. Hightower (L.C. # 2017CF3228)

Before Brash, C.J., Dugan and White, 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).

Richard Hightower appeals a judgment convicting him of one count of second-degree sexual assault of a child under the age of twelve. He also appeals the circuit court's order denying his postconviction motion. He argues that the circuit court erroneously exercised its

sentencing discretion. After reviewing the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Upon review, we affirm.

Hightower was initially charged with first-degree sexual assault of a child under the age of twelve, which carries a maximum prison term of sixty years, with a mandatory period of initial confinement of twenty-five years. Pursuant to a plea agreement, Hightower pled guilty to a reduced charge of second-degree sexual assault of a child, which carries no mandatory period of initial confinement. The State agreed to request a prison sentence, but not make a specific recommendation to the circuit court as to the term of imprisonment.

At sentencing, Hightower's counsel emphasized that he had no prior criminal history and that he had many connections to the community. Hightower requested that the circuit court impose five to six years of initial confinement and ten years of extended supervision. The circuit court sentenced Hightower to sixteen years of initial confinement and ten years of extended supervision. Hightower filed a postconviction motion seeking sentence modification or resentencing. The circuit court denied the motion.

Appellate review of a sentencing decision is limited to determining whether the circuit court properly exercised its discretion when it imposed sentence. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. “[S]entencing decisions of the circuit court are generally afforded a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant.” *Id.*, ¶18 (alteration in original; citation omitted).

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

“When imposing a sentence, the circuit court must identify the objectives of its sentence, which include protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others.” *State v. Owens*, 2016 WI App 32, ¶25, 368 Wis. 2d 265, 878 N.W.2d 736. “In determining the sentencing objectives, the circuit court must consider a variety of factors, including the gravity of the offense, the character of the defendant, and the need to protect the public.” *Id.* “The weight assigned to each factor is left to the circuit court’s discretion.” *Id.*

Hightower argues that the circuit court erroneously exercised its discretion because it ignored his positive attributes and focused on the aggravating factors pertaining to his crime. He contends that the circuit court held his history of being a law-abiding citizen against him. Hightower also argues that the circuit court failed to explain why sixteen years of initial confinement was necessary and argues that his sentence was unduly harsh under the circumstances. We reject these arguments.

We agree with the following analysis by the postconviction court:

The [sentencing] court considered that the defendant did not have a prior record and that he “was a good family man for a good portion of his life,” however, the court did not find that unusual because most interfamily sexual assault cases involve people who have no prior record and who “no one would ever expect would do something as horrific as this.” Despite all outward appearances, the court viewed the defendant as a wolf in sheep’s clothing – a “monster lurking in the shadows” who betrayed the trust of his young daughter. The court also considered that the seriousness of the offense ranked up “pretty high” in comparison to other sexual assault cases it had sentenced. The court stated: “40 times – 40 times in many different ways was this young girl violated, and she says that he threatened her.... This is not a one-time touching where somebody ... realized they did something wrong and stopped. This was going on for a long period of time, and this young girl was brutally violated.” The court recognized that the defendant quickly accepted responsibility for his actions and entered a plea; however, the court could not overlook the fact that the charge was reduced to a lesser offense without the 25 year

mandatory minimum confinement term, so the court considered that “there is also a portion of self-preservation that goes along with this, that is being offered something significantly less.” Finally, the court considered the defendant’s rehabilitative needs and the public interest in both punishing the defendant and sending a message to the community that there are grave consequences for this type of behavior.

The record shows that the court made its sentencing decision through a careful balancing of the relevant sentencing factors. The court appropriately balanced the various sentencing factors in this case and did not erroneously exercise its discretion or impose an unduly harsh or excessive sentence under the circumstances.

For the reasons explained above, we conclude that the circuit court properly exercised its sentencing discretion. It considered both aggravating and mitigating factors, but concluded that Hightower’s good reputation and lack of criminal record were outweighed by his heinous actions. Hightower suggests that the circuit court did not consider mitigating factors because it stated: “Mr. Hightower has rehabilitative needs, and he has a number of positive attributes. So that’s one thing we look at. I am not taking a look at that in this case.” When read in context, we believe that the circuit court’s statement means that it did not intend to give weight to Hightower’s good reputation and lack of criminal history in framing its sentence. *See Owens*, 368 Wis. 2d 265, ¶25 (“The weight assigned to each factor is left to the circuit court’s discretion.”). Regardless, the circuit court’s decision shows that it did, in fact, consider the appropriate factors and sentenced Hightower accordingly.

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