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DISTRICT II

October 5, 2022

To:

Hon. Jennifer Dorow
Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Patricia Sommer
Electronic Notice

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

2021AP1532-CR

State of Wisconsin v. Cain M. Okray (L.C. #2018CF623)

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

Cain M. Okray appeals from a judgment of conviction and an order denying his postconviction motion. 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.

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

Background

Okray had been engaging in sexually explicit online communications with a law enforcement officer who was pretending to be a fourteen-year-old girl. As part of the communications, he graphically encouraged the “girl” to have sexual intercourse with him, sent “her” multiple sexually explicit photos, and asked “her” to send him a photo of her vagina. Okray also arranged to meet the “girl” at a Dunkin’ Donuts, and he traveled to that area around the designated time. He was subsequently arrested and charged with using a computer to facilitate a child sex crime.

A jury found Okray guilty of the charged offense. One of the conditions of extended supervision imposed as part of his sentence was that he not “possess any pornographic or sexually explicit materials.” Postconviction, Okray challenged and sought removal of this condition on the basis that it is “not reasonably related to [his] conviction or his rehabilitation.” The circuit court denied his postconviction challenge, and he now appeals.

Discussion

As we have previously stated, a sentencing court has:

wide discretion and may impose any conditions of probation or supervision that appear to be reasonable and appropriate. We review such conditions under the erroneous exercise of discretion standard to determine their validity and reasonableness measured by how well they serve their objectives: rehabilitation and protection of the state and community interest.

State v. Davis, 2017 WI App 55, ¶12, 377 Wis. 2d 678, 901 N.W.2d 488 (quoting *State v. Stewart*, 2006 WI App 67, ¶11, 291 Wis. 2d 480, 713 N.W.2d 165). The circuit court here did not erroneously exercise its discretion in imposing the extended supervision condition that Okray

not “possess any pornographic or sexually explicit materials” as the evidence presented at trial and sentencing made it clear that his significant appetite for such material went hand in hand with his crime and contributed to it.

Okray sent multiple sexually explicit email messages and adult pornographic images and videos to someone he believed to be a fourteen-year-old girl, including sending a photograph of “semen coming from [a] vagina” and a photograph of an erect penis and asking the “girl” if “she” “[c]ould ... take a cock this big.” Okray asked “her” to send him a photograph of her vagina and told “her,” “I want to take a pic of my cum dripping from your pussy.” That request for a photograph and desire to take a photograph additionally indicated his interest in obtaining and possessing child pornography specifically.

Additionally, Okray’s own expert report by a clinical and forensic psychologist, which report was presented for the circuit court’s sentencing consideration, indicates Okray admitted “viewing pornography on the Internet up to ‘a few times per week’” while masturbating, “enjoy[ing] having sexual discussions for fantasy purposes online, either through sexting or in emails,” “having online sexual chats after his last sexual affair,” and in connection with this case, “repl[ying] to an ad and beg[inning] sexualized discussions with ‘someone who ID’d self as 14-year-old female.’” He informed the psychologist that “he sent sexual images [to the ‘girl’], some of himself and some downloaded pornographic images, because that was his mode of operation in all of his sexual conversations with online strangers.” Okray estimated that he “first bec[ame] involved in sexting or emailing sexual conversations with strangers in 2012,” finding “individuals to chat with on Craigslist.” His conversations “revolved around sexual practices and sexual fantasies.”

The report indicates the psychologist also spoke with Okray's wife, who "confirmed her statement to law enforcement that indicated her belief that Mr. Okray had a 'sex addiction.' She stated that her husband has always had a 'high libido' and 'he likes his porn.'... She estimated that he viewed pornography approximately once per day." Observing his "[b]ehavioral [p]attern," the psychologist wrote that Okray "has engaged in riskier sexual practices including multiple infidelities and online sexual behavior with strangers during his marriage" and "[i]t appears that his sexual preoccupation was a significant motivating factor for his behavior," adding again later in her report that his behavior was "motivated by his sexual preoccupation and drive."

Okray's extreme preoccupation with online sexual communications and visual stimuli, his "mode of operation" with strangers he meets online, his appetite for sex with strangers and pornography generally, and his specific request that the "girl" in this case send him pornographic photos of "herself" cannot be separated from his decision to take that further by trying to meet up with the "girl" to engage in sexual acts. The circuit court did not erroneously exercise its discretion by imposing the condition at issue because keeping Okray away from "pornographic or sexually explicit materials" will undoubtedly assist his rehabilitation and aid in preventing him from reoffending. In this same way, the condition will also serve the community by decreasing the likelihood he will reoffend.²

² On appeal, Okray also contends the extended supervision condition cannot stand because it is unconstitutionally vague. Because he raises this issue for the first time on appeal, we do not consider it. See *City of Mequon v. Hess*, 158 Wis. 2d 500, 506, 463 N.W.2d 687 (Ct. App. 1990) ("The court of appeals will not generally consider an issue raised for the first time on appeal.").

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