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**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  
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**DISTRICT III**

April 4, 2023

To:

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Circuit Court Judge  
Electronic Notice

Matt Borkovec  
Electronic Notice

Sheila Dudka  
Clerk of Circuit Court  
Marinette County Courthouse  
Electronic Notice

Kieran M. O'Day  
Electronic Notice

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

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2022AP179-CR	State of Wisconsin v. Chasity M. Denny
2022AP180-CR	(L. C. Nos. 2019CF291, 2019CF292)

Before Stark, P.J., Hruz and Gill, 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).**

Chasity Denny appeals from judgments convicting her of two drug charges in companion cases and from an order denying her motion for sentence modification in both cases. Denny contends that her sentences were unduly harsh because they exceeded the parties' recommendations and that the circuit court failed to consider Denny's rehabilitative needs. Based upon our review of the briefs and records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In Marinette County case No. 2019CF291, the State alleged that Denny and her boyfriend Brian Blasing had provided the fentanyl-laced heroin that was used in a fatal drug overdose by Terry Westphal. In Marinette County case No. 2019CF292, the State alleged that Denny and Blasing had sold cocaine to a confidential informant in a controlled drug buy. Denny eventually pled no contest to one count of delivery of fentanyl and one count of delivery of cocaine, and she agreed to cooperate in the prosecution of Blasing in several cases. In exchange, the State agreed to: amend the Information in case No. 2019CF291 to remove a first-degree reckless homicide charge; consolidate and then dismiss, as read-in offenses, a methamphetamine charge and an additional cocaine charge from an Oconto County case; and cap its sentence recommendation at six years' initial confinement followed by ten years' extended supervision.

The circuit court agreed to the parties' request to use at sentencing a presentence investigation report (PSI) that had been prepared for an Oconto County case where Denny was convicted of delivery of heroin, but acquitted of a homicide charge related to the overdose death of another man, Jeff Pecha. The PSI related that Denny had "spiraled into heavy drug use" after losing her house and job, and she was in need of AODA treatment. The PSI author noted that while Denny acknowledged selling methamphetamine, she continued to implausibly deny any involvement in selling heroin and took no responsibility for her contributing role in causing Pecha's overdose death. Separately, Westphal's mother and sister each filed victim impact statements asking the court to impose the maximum sentences, as well as seeking restitution for funeral and burial expenses.

At the sentencing hearing, the circuit court deemed the fentanyl count to be aggravated because it resulted in the death of a human being. The court noted that, absent the plea deal

removing the reckless homicide charge, Denny's conduct could have resulted in a forty-year sentence.

As to Denny's character, the circuit court noted that Denny had taken responsibility for her role in causing Westphal's overdose death, and it explained that the court did not take into consideration that Denny had denied responsibility in connection with Pecha's overdose death because she had been acquitted of that charge. In addition, the court gave Denny credit for providing candid and "critically important testimony" against Blasing. The court nonetheless observed that Westphal's death was not an "isolated incident ... by any stretch of the imagination." Rather, the court viewed Denny and Blasing as "business partners selling death and destruction in the community." The court observed that Denny "was at the center of the illegal drug trade in Marinette County for a significant period of time" and that she had made an out-of-town trip to buy more fentanyl-laced heroin the very day after Westphal's death. The court viewed Denny's lifestyle of drug trafficking as "kind of the definition of undesirable behavior." The court acknowledged that Denny was addicted to methamphetamine herself. As a result, the court concluded that Denny's personality and social traits were "totally overwhelmed by her drug use," making it impossible to know what kind of person she would be without the drug use. Even taking into account Denny's own addiction, the court observed that Denny "was perfectly willing to put other people's lives at risk every day to fulfill her needs."

In terms of its sentencing goals, the circuit court stated that the need to protect the community "screams for a significant sentence here." The court said it was "not really terribly interested" in punishment because there was no sentence it could impose "that would be in any way equivalent to the harm [Denny] has caused" and because Denny had already "done a really good job of punishing herself" and would "live with this the rest of her life." The court also was

“not particularly concerned” about Denny’s rehabilitative needs, given her “egregiously awful” conduct. Moreover, given the steps Denny had already taken, the court was not convinced that Denny would need prison programming in order to change her life. The court was skeptical that whatever sentence it imposed was likely to have much deterrent effect, considering that Denny’s “replacement” was likely already trafficking drugs in the community. However, the court did believe that other people involved in drug trafficking might be induced to testify against “more evil” partners if they knew that they could have “a life after prison.” Overall, the court concluded that the goals of protecting the public, punishing conduct that resulted in the loss of lives, and deterring others from continued drug trafficking “far overshadow[ed]” the goal of rehabilitation in this case.

Ultimately, the circuit court decided to accept the State’s recommendation as to the length of the sentences in order to provide “the tools that the district attorney legitimately needs in this fight against drugs.” The court imposed consecutive terms of five years’ initial confinement followed by five years’ extended supervision on the fentanyl count and one year of initial confinement followed by five years’ extended supervision on the cocaine count. The court also ordered Denny to pay \$13,935.90 in restitution. However, the court rejected the requests of both parties to deem Denny eligible for earned release through the Substance Abuse Program or Challenge Incarceration Program. The court stated that it did not want Denny to get “one second of early out time” because the court would have imposed longer sentences but for the plea deal.

Denny moved to modify her sentences to allow participation in the earned release programs. She argued that her sentences were unduly harsh because, absent eligibility for early release, they were “much harsher” than the parties’ recommendations, and because the circuit

court failed to properly consider the factor of rehabilitation. The court denied the motion, and Denny now raises the same issue on appeal.

When imposing a sentence, the circuit court should discuss the severity of the offense and the character of the offender and relate those factors to identified sentencing objectives such as the need for punishment, protection of the public, general deterrence, rehabilitation, restitution, or restorative justice. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The primary sentencing objectives may vary from case to case, and what weight to assign each factor lies “particularly within the ... court’s discretion.” *Id.*, ¶41 (regarding sentencing objectives); *State v. Schreiber*, 2002 WI App 75, ¶8, 251 Wis. 2d 690, 642 N.W.2d 621 (regarding sentencing factors). In order to demonstrate an erroneous exercise of discretion, a defendant generally must show that the record contains an unreasonable or unjustifiable basis for the circuit court’s action. *Schreiber*, 251 Wis. 2d 690, ¶9.

A sentence may be considered unduly harsh or unconscionable only when it is “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). There is a presumption that a sentence “well within the limits of the maximum sentence” is not unduly harsh. *Id.*, ¶¶31-32 (citation omitted). We will affirm a circuit court’s decision that a sentence it imposed was not unduly harsh unless the court failed to apply the proper legal standard to the facts of record through a process of reasoning to reach a reasonable result. *Id.*, ¶30.

The record demonstrates no erroneous exercise of discretion here, either at the original sentencing hearing or at the postconviction hearing. At the original hearing, the circuit court clearly identified its primary sentencing objectives as protecting the public and deterrence by creating incentives for other drug dealers to testify for the State. It also discussed the severity of the offenses and Denny's character in the context of those objectives. Far from failing to consider rehabilitation, the court explicitly discussed why it did not deem rehabilitation as an important sentencing goal in this case. Denny's mere disagreement with the weight the court gave to that objective does not show that the court relied upon any unreasonable or unjustified basis for its decision.

At the postconviction hearing, the circuit court commented that it did not "think there's a human being alive who would be shocked" at a six-year sentence for conduct that resulted in someone's death. That comment plainly shows that the court was evaluating Denny's claim that her sentence was unduly harsh under the proper *Grindemann* standard. We further note that the six years' initial confinement the court imposed was well within the maximum fifteen years' initial confinement the court could have imposed. *See* WIS. STAT. §§ 961.41(1)(a), (cm)1g., and 939.50(3)(e), (g). In sum, the circuit court properly determined that the sentences it imposed were not unduly harsh.

Therefore,

IT IS ORDERED that the judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*