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DISTRICT III

October 11, 2023

To:

Hon. Jay N. Conley
Circuit Court Judge
Electronic Notice

Trisha LeFebre
Clerk of Circuit Court
Oconto County Courthouse
Electronic Notice

Michael J. Conway
Electronic Notice

Kathleen Henry
Electronic Notice

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

2022AP1791-CR State of Wisconsin v. Ryan Paul Winslow (L. C. No. 2020CF45)

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).

Ryan Winslow appeals a judgment of conviction for multiple offenses and an order denying his postconviction motion for sentence modification. Winslow argues that his sentences are unduly harsh in two respects. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2021-22).[1]

The State charged Winslow with seven offenses: second-degree sexual assault; felony intimidation of a victim; stalking; harassment; two counts of using a computer message to

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

threaten injury or harm; and disorderly conduct. According to the criminal complaint, the victim established a friendship with Winslow after they met at her workplace. During their relationship, however, Winslow's conduct toward the victim began to cause her concern. Winslow sent the victim photographs of the exterior of her home along with messages telling her to say "hi" to her husband, which the victim found frightening. He also showed up at her workplace unannounced, which the victim interpreted as him "checking on" her.

In December 2019, the victim reported to police that approximately two weeks earlier, Winslow had forcibly inserted his penis into her vagina and had intercourse with her, after she repeatedly told him that she did not want to have sex. Following the assault, Winslow sent threatening messages to the victim. In particular, Winslow told the victim that he would harm her husband if she told anyone about the assault. Winslow also told the victim that he "was going to start a fire," which was "very upsetting" to the victim because she knew that Winslow was on probation for arson.

Pursuant to a plea agreement, the State amended Count 1 from second-degree sexual assault (a Class C felony) to fourth-degree sexual assault (a Class A misdemeanor). Winslow then entered no-contest pleas to all seven of the charges against him.

At sentencing, the victim addressed the circuit court and emphasized that Winslow's conduct had caused her significant emotional distress, culminating in a suicide attempt. She asked the court to impose the maximum sentences and to require Winslow to register as a sex offender.

The State similarly asked the circuit court to impose the maximum sentences on all counts. The State emphasized Winslow's "atrocious" prior record, his revocation from

probation, his failure to accept responsibility for his actions, the gravity of his offenses, and the need to protect the public. To emphasize the danger that Winslow posed to the public, the State relayed statements that Winslow had made to his cellmate about his threats against the victim. Winslow told his cellmate that he had threatened to bash the victim's husband's head with a crowbar and to poison the victim's horses with antifreeze. Winslow also told his cellmate that he "stole" something from the victim, and when asked what he meant, he responded, "I stole her mind. I straight up fucked her and fucked her mind." In addition to requesting that the court impose the maximum sentences on all counts, the State asked the court to order lifetime sex offender registration.

The presentence investigation report (PSI) recommended that the circuit court sentence Winslow to eighteen months' initial confinement followed by one year of extended supervision on the witness intimidation charge, with equal or lesser concurrent sentences on the remaining charges. The PSI also recommended that Winslow's sentences in this case be concurrent with any other sentences. Winslow asked the court to follow the PSI's recommendation.

The circuit court began its sentencing remarks by emphasizing the seriousness of Winslow's offenses, stating that it found the circumstances of the case "horrific" and noting "how intimidating" it would be to receive an arson threat from a convicted arsonist. The court then stated that its most important sentencing objective was the protection of the public, finding that Winslow had a moderate to high risk of reoffending. The court also considered Winslow's rehabilitative needs, citing his need for mental health treatment and his status as a "criminal thinker." Although the court credited Winslow for his "willingness to work and be productive," it nevertheless found that Winslow's character was "poor," based on his criminal record and his

conduct toward the victim. The court also acknowledged the victim's request for the maximum sentences.

The circuit court expressly considered probation, but it concluded that a probationary disposition would be inappropriate, given that Winslow was on probation when he committed the offenses at issue in this case. Under these circumstances, the court found that confinement was necessary to protect the public and that placing Winslow on probation would depreciate the seriousness of the offenses. The court also noted that, as a result of Winslow's conduct in this case, he was revoked from his probation in a Clark County case and was sentenced to five years' initial confinement followed by three years' extended supervision. The court concluded that it would be inappropriate to make Winslow's sentences in this case concurrent with his Clark County sentence because Winslow should receive an additional "consequence" for his conduct against the victim.

Ultimately, the circuit court sentenced Winslow to three years' initial confinement followed by three years' extended supervision on the felony intimidation of a witness charge—which the court characterized as the "most serious" charge against Winslow. The court explained that it believed Winslow's conduct warranted the maximum sentence for that offense—i.e., five years' initial confinement followed by five years' extended supervision—but the statutory maximum was not necessary if the court made Winslow's sentence consecutive to his Clark County sentence. The court then imposed lesser sentences on the remaining charges, concurrent with one another and with Winslow's sentence on the witness intimidation charge, but consecutive to his Clark County sentence.

Finally, the circuit court ordered Winslow to register as a sex offender for the remainder of his life. However, the court gave Winslow the right to petition to remove the registration requirement following the completion of his extended supervision.

Winslow subsequently moved for sentence modification, arguing that both the lifetime sex offender registration requirement and his sentence on the witness intimidation charge were unduly harsh. The circuit court denied Winslow's motion, stating that the court's rationale during the sentencing hearing "speaks for itself" and that "the sentence here was entirely proper." To the extent Winslow argued that he should not be required to register as a sex offender based on his conviction for fourth-degree sexual assault, a misdemeanor, the court noted that the victim had referred to the incident as a "rape" and had described an offense that was "much more heinous than the one [Winslow] actually pled to."

Sentencing decisions are committed to the circuit court's discretion, and our review is limited to determining whether the court erroneously exercised its discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "A court properly exercises its discretion if it relies on the relevant facts in the record and applies the proper legal standard to reach a reasonable decision." ***State v. Edmunds***, 2008 WI App 33, ¶8, 308 Wis. 2d 374, 746 N.W.2d 590.

A circuit court's decision that a sentence it imposed was not unduly harsh or unconscionable is also reviewed for an erroneous exercise of discretion. ***State v. Cummings***, 2014 WI 88, ¶45, 357 Wis. 2d 1, 850 N.W.2d 915. A sentence is 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. ***Id.***, ¶72. "A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable." ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

On appeal, Winslow first argues that the circuit court's requirement that he register as a sex offender for life is unduly harsh. As noted above, Winslow was convicted of fourth-degree sexual assault, contrary to WIS. STAT. § 940.225(3m). A court may order sex offender registration for any person convicted of a violation of WIS. STAT. ch. 940 if the court determines that: (1) the underlying conduct was sexually motivated; and (2) it would be in the interest of public protection to require the person to register as a sex offender. WIS. STAT. § 973.048(1m)(a). The statute sets forth a number of factors that a court may consider when determining whether registration would be in the interest of public protection, including "[t]he probability that the person will commit other violations in the future" and "[a]ny other factor that the court determines may be relevant to the particular case." Sec. 973.048(3)(e), (g). The statute also grants the court discretion to "order the person to continue to comply with the reporting requirements until his or her death." Sec. 973.048(4).

In this case, the circuit court determined—and Winslow does not dispute—that the conduct underlying Winslow's conviction for fourth-degree sexual assault was sexually motivated. Furthermore, the record contained ample evidence from which the court could

reasonably conclude that lifetime sex offender registration would be in the interest of public protection.[2]

According to the criminal complaint, after Winslow sexually assaulted the victim, he repeatedly sent her threatening messages, including threats to harm her husband and "start a fire." Winslow also engaged in threatening behavior by showing up at the victim's place of work and sending her photographs of the exterior of her home. Winslow later relayed his threats against the victim to his cellmate, describing how he had threatened to bash the victim's husband's head with a crowbar and poison the victim's horses with antifreeze, and also stating that he had stolen the victim's mind. Winslow's behavior caused the victim such significant emotional distress that she attempted suicide. The circuit court could reasonably determine that Winslow's conduct—which the court characterized as "horrific"—showed that he posed a threat to the public.

Winslow's criminal record further supported a determination that sex offender registration would be in the public interest. Prior to this case, Winslow had been convicted of arson, burglary, battery, attempted burglary, multiple counts of driving a motor vehicle without the owner's consent, and felony bail jumping. He was on probation for some of those offenses when he committed the crimes at issue in this case. Based on Winslow's criminal record, the circuit court characterized him as a "criminal thinker" with a moderate to high recidivism risk. On the whole, the court's findings amply supported a determination that it would be in the

[2] The circuit court did not expressly state that lifetime sex offender registration would be in the interest of public protection. However, when a circuit court fails to explain its reasoning, "we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

interest of public protection to require Winslow to register as a sex offender for the remainder of his life.

On appeal, Winslow argues that while lifetime sex offender registration may be appropriate for more serious offenses, such as first-degree sexual assault, "[f]ourth-degree sexual assault is quite different and should be treated differently in sentencing." This argument fails because the decision to order lifetime sex offender registration turns on the circuit court's determination of the public's interest, not on the "seriousness" or classification of the underlying conviction. *See* WIS. STAT. § 973.048(1m)(a). Here, the court could reasonably determine, based on Winslow's criminal history and his egregious conduct against the victim, that the public's interest would be best served by imposing a lifetime registration requirement, even though Winslow had entered a plea to a misdemeanor. Furthermore, the court mitigated the effect of its decision to impose lifetime registration by allowing Winslow to petition to remove the registration requirement following the completion of his extended supervision.

Winslow also asserts that the lifetime registration requirement is unduly harsh because he is "a hard worker, showed remorse and is improving himself." Winslow does not explain, however, why any of these factors show that the circuit court erroneously exercised its discretion by determining that lifetime sex offender registration would be in the interest of public protection. Notably, at sentencing, the court acknowledged Winslow's "willingness to work and be productive," but it nevertheless ordered him to register as a sex offender for life. Under the circumstances of this case—particularly, Winslow's criminal record and the gravity of his conduct toward the victim—the imposition of a lifetime sex offender registration requirement was not so disproportionate to the offense as to shock public sentiment. *See* ***Cummings***, 357 Wis. 2d 1, ¶72.

Winslow next argues that his sentence on the witness intimidation charge is unduly harsh. As noted above, the circuit court sentenced Winslow to three years' initial confinement followed by three years' extended supervision on that count, consecutive to his Clark County sentence. Winslow contends that the court should have instead followed the PSI's recommendation of eighteen months' initial confinement followed by one year of extended supervision, concurrent with his Clark County sentence.

This claim fails because the record shows that the circuit court imposed a reasonable sentence on the witness intimidation charge that was below the statutory maximum after considering proper sentencing factors—namely, the gravity of Winslow's offenses, Winslow's character and rehabilitative needs, and the need to protect the public. *See* WIS. STAT. § 973.017(2); ***Gallion***, 270 Wis. 2d 535, ¶23. During its sentencing remarks, the court stated that the protection of the public was its "number one concern." Based on the "horrific" circumstances of this case, along with Winslow's criminal record, the court found that Winslow posed a threat to public safety and therefore required a prison sentence rather than probation. In fact, the court determined that Winslow's conduct merited the maximum sentence of five years' initial confinement followed by five years' extended supervision on the witness intimidation charge. However, the court concluded that a less-than-maximum sentence on that count would nevertheless be appropriate if imposed consecutively to Winslow's Clark County sentence.

Under these circumstances, Winslow's sentence of three years' initial confinement followed by three years' extended supervision does not shock public sentiment. *See* ***Cummings***, 357 Wis. 2d 1, ¶72. As noted above, a sentence well within the statutory maximum is "unlikely" to be unduly harsh or unconscionable. ***Scaccio***, 240 Wis. 2d 95, ¶18. While Winslow asserts that the circuit court should have followed the PSI's recommendation, a court is not bound by the

recommendations in a PSI. *See* ***State v. Hall***, 2002 WI App 108, ¶16, 255 Wis. 2d 662, 648 N.W.2d 41. Here, the court considered the PSI's recommendation but determined that a sentence concurrent to Winslow's Clark County sentence would be an insufficient consequence for Winslow's "horrific" conduct toward the victim. *See* ***State v. Douglas***, 2013 WI App 52, ¶20, 347 Wis. 2d 407, 830 N.W.2d 126 (stating that a circuit court "may craft an appropriate sentence by recognizing that concurrent sentences may unduly undermine appropriate sentencing goals by giving a defendant a pass for some of his or her crimes"). The court did not erroneously exercise its discretion by declining to follow the PSI's recommendation.

For the foregoing reasons, we conclude that neither the lifetime sex offender registration requirement nor Winslow's sentence on the witness intimidation charge is unduly harsh. The circuit court did not erroneously exercise its sentencing discretion, nor did the court erroneously exercise its discretion by denying Winslow's postconviction motion for sentence modification.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals