

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2490-CR

Cir. Ct. No. 2011CF1409

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CLARENCE W. ASHFORD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: THOMAS J. WALSH, Judge. *Affirmed.*

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Clarence Ashford appeals a judgment convicting him of delivering cocaine base and an order denying his motion for resentencing. He contends the sentencing court impermissibly considered his continued denial of guilt. Because his argument places an unnecessarily negative spin on the court's

comments and mischaracterizes the law regarding proper consideration of lack of remorse, we affirm the judgment and order.

¶2 At sentencing, Ashford maintained his innocence, stating, “I really had nothing to do with nothing” and “I can’t accept responsibility for the shortcomings of the next man and be sentenced to five years in prison because of my background.” After Ashford spoke, the court considered factors related to Ashford’s character including his positive relationships, his completion of high school, his employment history, his extensive criminal record including prior drug convictions and his high risk of recidivism. The court concluded with the statement that leads to this appeal: “I have to consider all of those things, and I consider the fact that you maintain that you didn’t do it, and that tells me something too.” Ashford contends the court’s failure to specifically limit its finding to Ashford’s lack of remorse “inevitably gives rise to the inference that the sentencing court intended its statement to apply more broadly to the defendant’s exercise of his right to a trial.”

¶3 Ashford’s argument lacks a factual basis for three reasons. First, when the sentencing court’s statements may be interpreted differently, we must presume that the court acted reasonably. *State v. Wickstrom*, 118 Wis. 2d 339, 356, 348 N.W.2d 183 (Ct. App. 1984). Second, the court’s statement does not suggest any improper use of Ashford’s continued denial of guilt. The rule against compelling a confession at the sentencing hearing seeks to avoid punishing a defendant for exercising his or her right to a trial or right against self-incrimination, distinct from the sentencing court’s obligation to consider the defendant’s demeanor, need for rehabilitation and danger to the public. *State v. Baldwin*, 101 Wis. 2d 441, 458-59, 304 N.W.2d 742 (1981). The court did not attempt to coerce a confession from Ashford, or even give Ashford an opportunity

to speak after the challenged statement. Third, at the postconviction hearing, the court noted:

In no way, shape, or form did I tell him that I needed him to admit that he was guilty or that if he admitted his guilt, he would be better off in this sentencing or that I knew he was guilty. In fact, I told him on a couple of occasions it was the jury that found him guilty This Court intended in referencing that to speak for his character, not that he should be penalized in any way for refusing to admit his guilt, not that I somehow thought he was guilty and he better fess up.

Based on the court's own explanation of the challenged statement, the record does not support Ashford's contention that the statement reflects the court's consideration of Ashford's exercise of his right to a trial.

¶4 Ashford's argument also misstates the law by contending that a sentencing court erroneously exercises its discretion whenever a sentence is based "in any part" on a defendant's continued denial of guilt. Rather, a court is prohibited from imposing a harsher sentence *solely* because the defendant refused to admit his or her guilt. *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). Here, the court considered numerous factors relating to Ashford's character. The court appropriately considered Ashford's continued denial of guilt as one of several elements of his character, and imposed a sentence well within the maximum sentence for this offense. Continuing denial of guilt has been upheld as a legitimate factor relating to a defendant's amenability to rehabilitation and to his lack of remorse, a significant character trait. *Wickstrom*, 118 Wis. 2d at 356; *Baldwin*, 101 Wis. 2d at 458-59; *United States v. Santiago*, 582 F.2d 1128, 1136 (7th Cir. 1978).

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

