

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 96-3081-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEAN A GOEHRING, SR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Wood County:
EDWARD F. ZAPPEN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Dean Goehring appeals from a judgment convicting him on two counts of first-degree sexual assault of a child. Judgment was entered after revocation of Goehring's probation. The issues are whether the trial court failed to adequately articulate its reasons for imposing a seven-year prison sentence, and whether the court improperly punished Goehring for

exercising his Fifth Amendment right to remain silent in therapy. We reject his arguments and affirm.

The State originally charged Goehring with three counts of first-degree sexual assault of a child, as a repeater, based on three contacts Goehring had with a twelve-year-old girl. In exchange for Goehring's guilty plea on two of the counts, the State dismissed the third and dropped the repeater allegation.

At sentencing, the court imposed a sentence very close to that recommended by the parties. For the first count of the sexual assault, the court imposed a seven-year prison term, imposed and stayed, with fifteen years' probation. Included in Goehring's conditions of probation was the requirement that he participate in sexual offender counseling, have no contact with minor females, including his nieces, and pay restitution for reasonable counseling for the victim. On the second count of sexual assault, the court withheld sentence and granted Goehring fifteen years of probation concurrent with and subject to the same conditions as the probation on count one. The court deemed the sentences "very lenient," but deferred to "the opinion of your probation agent [that] this matter can be dealt with within the community."

Goehring's sexual offender treatment consisted of weekly group therapy sessions with other convicted sex offenders. Over a seventy-two week period, Goehring attended seventy sessions, and was excused from the two that he missed. However, as it was later determined, "he did not meaningfully participate in the treatment sessions. Most of the time he sat in the sessions and said nothing. On other occasions, when he did speak, he did so only to answer specific questions. He also made inconsistent and deceitful statements in group." As a result of his failure to participate, and to heed repeated warnings about his lack of

participation, the State revoked both terms of probation. Consequently, he began serving the seven-year stayed sentence on count one, and returned to the trial court for resentencing on count two.

On resentencing, the trial court stressed the seriousness of the offenses, and cited testimony from Goehring's counselor that he was likely to reoffend, given the failure to even attempt to benefit from treatment. That fact made the court "very frightened to let you get back out into this community" Consequently, the trial court found no reason to treat count one differently than count two, both being nearly identical assaults against the same child, and therefore sentenced Goehring to a seven-year prison term, consecutive to the seven years imposed on the first count. The court added that Goehring had demonstrated from his behavior that rehabilitation could only be accomplished in confinement for a lengthy period of time.

We recognize a strong public policy against interfering with the trial court's sentencing discretion. *State v. Mosley*, 201 Wis.2d 36, 43, 547 N.W.2d 806, 809 (Ct. App. 1996). The record must show that the trial court exercised its discretion in imposing sentence, and the trial court must state its reasons for the sentence. *Id.* Those reasons, in turn, should focus on three primary factors: the gravity of the offense, the character of the offender, and the need to protect the public. *Id.* at 43-44, 547 N.W.2d at 809.

The trial court properly considered the primary sentencing factors, and adequately explained its reasoning based on those factors. The trial court stressed the seriousness of sexually assaulting children, not only at the resentencing hearing, but in remarks at the original sentencing as well. The court also heard evidence on and considered the chances that Goehring would reoffend

upon release from prison, and considered the risk of reoffending unreasonably high without a lengthy period of incarceration. Finally, the court noted that Goehring's lack of any demonstrated motive to rehabilitate himself through treatment reflected on his character. Although Goehring deems the court's treatment of these factors as minimal, we conclude that they provide a sufficient, articulated basis for the sentence, under our deferential standard of review.

Goehring has not shown that the court violated his Fifth Amendment right by prejudicially considering his refusal to participate in treatment. The Fifth Amendment protects one against self-incrimination, not against mandatory participation in group therapy as a condition of probation. Nothing in the record equates the two in Goehring's case, because he has not shown that his therapy included a mandatory confession. Although a sentencing court may not, in effect, coerce a confession by giving undue weight to the defendant's refusal to confess, *State v. Baldwin*, 101 Wis.2d 441, 457-59, 304 N.W.2d 742, 751 (1981), that rule did not prevent the court from giving substantial weight to the implications of Goehring's refusal to even attempt to rehabilitate himself through participation in treatment. Additionally, we question whether *Baldwin* even applies to this case because Goehring had already voluntarily confessed twice, both in court and in a voluntary statement to police.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

