

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2003

Cornelia G. Clark
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. 02-2945-CR
STATE OF WISCONSIN**

**Cir. Ct. Nos. 00-CF-285
00-CF-305**

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARL J. BOWER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Sauk County: GUY D. REYNOLDS, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Carl Bower challenges two sentences of life imprisonment without the possibility of parole or extended supervision that he received as a persistent repeater pursuant to WIS. STAT. § 939.62(2m)(c) (1997-

98).¹ He claims the application of Wisconsin’s so-called “two strikes” provision against him violates the constitutional prohibition against cruel and unusual punishment. We disagree and affirm.

¶2 Bower entered no contest pleas in consolidated cases to one count of second-degree sexual assault of a child and one count of repeated sexual assault of the same child. Each count included a penalty enhancer under WIS. STAT. § 939.62(2m)(c), which provides that the term of imprisonment for a persistent repeater who has been previously convicted of at least two serious felonies, or one or more serious child sex offenses, is life imprisonment without the possibility of parole or extended supervision.

¶3 Bower does not dispute that he had a prior serious child sexual assault conviction. He contends that the mandatory life sentences imposed were grossly disproportionate to the present offenses given that no force or threat of force was used, that similar offenses in the same county were punished with thirty-year and forty-year sentences at around the same time, that he could get a lesser sentence for homicide, that Bower expressed remorse and entered pleas to spare his victim from trial, and that many of the victim’s family members supported a shorter sentence with counseling.

¶4 The United States Supreme Court has recently emphasized, however, that the Eighth Amendment’s proportionality analysis in two or three strikes cases is not limited to the triggering offense alone but, rather, must encompass the offender’s recidivism. *Ewing v. California*, 123 S. Ct. 1179, 1189-

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

90 (2003). In addition, the Wisconsin Supreme Court has recently held that the legislature had a rational basis for mandating the highest penalty available under Wisconsin law for child sexual assaults committed by persons who have not been deterred by a first conviction, given the perceived recidivism rates for such crimes and the especially vulnerable segment of the targeted population. *State v. Radke*, 2003 WI 7, ¶¶28, 36, 259 Wis. 2d 13, 657 N.W.2d 66. In light of *Ewing* and *Radke*, we are persuaded that the penalty imposed here was not grossly disproportionate to Bower's crimes, against a child, which were committed as a persistent repeat offender.

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

