

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 8, 2008

David R. Schanker
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. 2007AP371-CR

Cir. Ct. No. 2004CF1010

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MITCHELL KING,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: DOROTHY L. BAIN, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Mitchell King, a former school teacher and coach, appeals a judgment convicting him of three counts of sexually assaulting a fifteen-year-old student, Natalie A. B. He also appeals an order denying his motion for resentencing. He argues that the State misrepresented the nature of King's

relationship with Natalie and the court relied on that misinformation; the court improperly enhanced the sentence based on general deterrence rather than King's own culpability; and King established new factors justifying a sentence reduction.¹ We reject these arguments and affirm the judgment and order.

¶2 King was charged with five counts of second-degree sexual assault of a child, four counts of child enticement and one count of exposing a child to harmful material. Pursuant to a plea agreement, King pled guilty to three counts of second-degree sexual assault of a child. The remaining counts, as well as three other felony counts from St. Croix County, were dismissed and read in for sentencing purposes. The court imposed concurrent sentences of eleven years' initial confinement and nine years' extended supervision.

¶3 The State's portrayal of King as "delusional" in believing that his relationship with Natalie was mutually consensual and the court's acceptance of that characterization provide no basis for relief. Neither the State nor the court used the term "delusional" in a clinical or psychiatric sense. Rather, the word conveys their assessment that King exhibited a distorted view of the propriety of his sexual relationship with the child. King attempted to portray the child as an equal who pursued a sexual relationship with him. Because a child under the age of sixteen is not competent to consent to sexual contact or intercourse, the law protects children from others and from themselves. *See State v. Fisher*, 211 Wis.2d 665, 671, 565 N.W.2d 565 (Ct. App. 1997). The legislature has determined that a child is not capable of considered consent and has a heightened

¹ King abandoned other issues raised in his postconviction motion by not pursuing them on appeal and, in his reply brief, withdraws arguments relating to the sentencing guidelines in light of *State v. Grady*, 2007 WI 81, 302 Wis. 2d 80, 734 N.W.2d 364.

vulnerability to physical and psychological harm. *Id.* The State’s argument and the court’s characterization of King’s representation of mutual affection is properly viewed as delusional thinking based on King’s exploitation of the child’s immature feelings. As the trial court noted, King’s duty was to protect Natalie from her own self-destructive behavior. The fact that King misguidedly persists in arguing that Natalie’s reciprocal affection and voluntary acts are mitigating, confirm the sentencing court’s characterization of his thinking as an aggravating factor.

¶4 The sentencing court properly considered general deterrence among the factors that support the twenty-year sentence. Sentencing courts are required to consider the rights and interests of the public. *See State v. Johnson*, 158 Wis. 2d 458, 465, 463 N.W.2d 352 (Ct. App. 1990). Imposing a sentence that might deter others from committing similar crimes reasonably promotes the public interest. Along with the seriousness of the offense, the numerous read-in offenses and King’s distorted view of Natalie’s role in their relationship, the court properly considered the deterrent effect on other teachers and coaches who might be tempted to exploit vulnerable children.

¶5 King has not established any new factor that would warrant sentence modification. A new factor is a fact highly relevant to the imposition of sentence, but not known to the sentencing court at the time of the original sentence either because it was not then in existence or because it was unknowingly overlooked by all of the parties. *See State v. Crochiere*, 2004 WI 78, ¶14, 273 Wis. 2d 57, 681 N.W.2d 524. It must be a fact that frustrates the purpose of the original sentence. *Id.* King argues that evidence of Natalie’s reciprocal affection toward King constitutes a new factor. The sentencing transcript shows that the trial court was aware of Natalie’s voluntary acts. Therefore, this factor is not “new.” In addition,

consideration of Natalie's reciprocal affection does not frustrate the purpose of the original sentence.

¶6 Likewise, the sentencing commission's statistics do not constitute a new factor. Knowledge that the sentence imposed is in the higher range of sentences imposed for Class C felonies does not account for the variety of crimes in that class, the twenty-five-year age gap in this case, King's abuse of his authority as a teacher and coach and the numerous read-in offenses. The statistics do not frustrate the purpose of the original sentence.

By the Court.—Judgment and order affirmed.

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

