

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 30, 2009**

David R. Schanker  
Clerk of Court of Appeals

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**Appeal No. 2008AP2264-CR**

**Cir. Ct. No. 2007CF351**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MICHAEL J. ENGBRETSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for La Crosse County:  
RAMONA A. GONZALEZ, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 VERGERONT, J. This appeal concerns WIS. STAT. § 973.048(1m) (2007-08),<sup>1</sup> which authorizes the circuit court to require that a person convicted of

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

specified crimes be required to register as a sex offender “if the court determines that the underlying conduct was sexually motivated as defined in s. 980.01(5)” and if it would be in the interest of public protection. Michael J. Engebretson pleaded guilty to stalking Kristi H. under WIS. STAT. § 940.32(2), which is included in the crimes listed in § 973.048(1m). The circuit court determined that his conduct was sexually motivated under the statutory definition because his motive was to induce Kristi H.’s son, Timothy, to resume a sexual relationship with Engebretson, which Timothy did not want. The court also decided that registration would be in the interest of public protection, and it ordered that Engebretson register.

¶2 On Engebretson’s appeal from the circuit court’s order, we conclude as follows. (1) In order to come within the definition of sexual motivation in WIS. STAT. § 980.01(5), the person who is the object of the sexual motivation must be a victim of the criminal conduct for which the defendant is being sentenced. (2) For the reasons we explain below, the circuit court did not err in deciding that Timothy was a victim of Engebretson’s stalking conduct. (3) Section 980.01(5) does not require a closer connection between the criminal conduct and the purpose of sexual gratification than that the court found to exist in this case. (4) Engebretson is not entitled to a reversal based on procedural errors because he did not object in the circuit court or request a different procedure. (5) The court’s determination that Engebretson’s stalking conduct was motivated by a desire to induce Timothy to resume an unwanted sexual relationship with him has a reasonable basis in the record before the court. Based on these conclusions, we affirm the circuit court’s order.

## BACKGROUND

¶3 The amended complaint and information alleged that between May 2005 and June 2007 Engebretson engaged in a course of conduct directed at Kristi H. that met the statutory requirements of stalking as a habitual criminal under WIS. STAT. § 940.32(2) and (2m)(b). The factual basis for this charge as alleged in the complaint included Kristi H.'s statements that Engebretson had been harassing her family for a couple of years and had on numerous occasions violated a two-year harassment injunction she had obtained against him, which had just expired. Most recently, the complaint alleged, Engebretson had followed her son Daniel. Daniel said that when he told Engebretson to leave or he would call the police, Engebretson made statements indicating he would have Daniel beat up and would continue to bother him. Kristi H. also stated that she had heard that Engebretson told a third party that he wanted to kill her oldest son, Timothy.

¶4 Engebretson entered into a plea agreement whereby he agreed to plead guilty to stalking under WIS. STAT. § 940.32(2), with the additional penalty for habitual criminality dropped. The agreement recognized that the State would be seeking a prison sentence. Engebretson agreed the court could use the complaint and the preliminary hearing as a factual basis for the plea.

¶5 The circuit court accepted Engebretson's plea and ordered a presentence investigation (PSI). The PSI describes the account of Kristi H. and her family on Engebretson's history of conduct toward the family. Timothy reported that he met Engebretson in approximately 2003 (when Engebretson would have been about twenty-nine years old and Timothy would have been sixteen or seventeen) and at first he was friends with Engebretson. However, when he tried to end the friendship because Engebretson was too "weird" for him,

Engebretson did not comply and tried to persuade Timothy to leave his family. Kristi H. reported that Engebretson was told to stay away from the family home and family members but he did not comply, even when there was an injunction; and he wrote numerous letters over the years to the family and to Timothy. Recently Timothy had disclosed that he had been sexually active with Engebretson when they were friends but it was unwanted on his part: Engebretson would supply alcohol to him and his friends and take advantage of them when they were intoxicated. All family members stated they were afraid of Engebretson as long as he was not incarcerated.

¶6 At sentencing the prosecutor argued for a prison sentence to be determined by the court. The prosecutor also argued that the conditions for extended supervision should be as proposed in the PSI, and these included registering as a sex offender. Defense counsel argued for a stayed prison sentence and probation with conditions set forth in an alternative PSI. These conditions did not include sex-offender registration, but defense counsel did not directly address sex-offender registration.

¶7 The court imposed the maximum sentence of three years and six months (one year and six months of initial confinement and two years of extended supervision), stayed that sentence, and placed Engebretson on probation for three years. As one of the conditions of probation, the court imposed sex-offender registration.

¶8 Postconviction Engebretson moved the court to vacate the requirement that he register as a sex offender. He contended that the conduct involved in the stalking charge and conviction was not “sexually motivated” as required by WIS. STAT. § 973.048(1m) and defined in WIS. STAT. § 980.01(5) to

mean that “one of the purposes for an act is for the actor’s sexual arousal or gratification or for the sexual humiliation or degradation of the victim.”

¶9 The hearing on the motion was primarily argument by the attorneys, with references to the complaint and the PSI. Engebretson made a statement, saying that there was no sexual motivation, he was simply filing a civil suit because of the harassment injunction and the lies about his violations of it, and all he did was tell Daniel that was happening.<sup>2</sup> The circuit court denied the motion, concluding that Engebretson’s stalking conduct was sexually motivated. It determined that Engebretson’s stalking behavior of the family was the result of his becoming fixated on Timothy and then thwarted in his efforts to convince Timothy to leave his family and continue to have a sexual relationship with him. Referring to Engebretson’s longstanding mental health issues, the court stated that he was not able to control his fixation and he reacted with the stalking conduct. Engebretson’s motive for the stalking conduct, the court found, was to undermine Timothy’s relationship with his family so that he could continue to have a sexual relationship with Timothy, even though it was not welcome.

## DISCUSSION

¶10 On appeal Engebretson contends that the circuit court erred in ordering that he register as a sex offender because the stalking conduct did not involve sexual conduct and any sexual relationship that Engebretson had with

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<sup>2</sup> A probation agent was also present and she spoke about a notice of revocation served that day on Engebretson, but it does not appear from the transcript that the court considered this information in its ruling.

Timothy in the past was not sufficient to establish a sexual motivation for the stalking conduct.<sup>3</sup>

¶11 The State responds that the criminal conduct itself—in this case, stalking—need not be sexual in nature as long as it is sexually motivated, and the person who is the object of the defendant’s sexual motivation need not be the victim of the criminal conduct for which the defendant is sentenced.<sup>4</sup> The State also asserts that the circuit court properly exercised its discretion because there was a sufficient factual basis for the court’s determination that Engebretson’s stalking conduct was a means to the end of furthering his sexual relationship with Timothy.

¶12 We identify the issues raised by the parties’ arguments as follows: (1) Must the person who is the object of the defendant’s sexual motivation be a victim of the stalking conduct? (2) Did the circuit court err in concluding that Timothy was a victim of the stalking conduct? (3) Does WIS. STAT. § 980.01(5) require a closer connection between the criminal conduct and the purpose of sexual gratification than that the circuit court found to exist in this case? (4) Is Engebretson entitled to a reversal based on procedural error? (5) Is there a reasonable basis in the record for the circuit court’s determination that

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<sup>3</sup> Engebretson does not make an independent argument that the circuit court erred in concluding that Engebretson’s registration as a sex offender would be in the interest of public protection. His argument on that statutory factor is that, since the stalking conduct was not sexually motivated, it is not in the public interest to require him to register. Accordingly, we do not discuss the public safety factor.

<sup>4</sup> In response to an order for supplemental briefing, the State clarified it is not contending that any sexual conduct of Engebretson involving Timothy is criminal—either conduct before the filing of the stalking charge or the sexual relationship that, according to the circuit court’s determination, Engebretson seeks to resume with Timothy. The only criminal conduct we are concerned with is the stalking conduct.

Engebretson's stalking conduct was motivated by a desire to induce Timothy to resume an unwanted sexual relationship with him?

I. Victim Under WIS. STAT. § 973.048(1m) and WIS. STAT. § 980.01(5)

¶13 Whether the person who is the object of the defendant's sexual motivation must be a victim of the crime requires that we construe WIS. STAT. § 973.048(1m) and WIS. STAT. § 980.01(5). This presents a question of law, which we review de novo. *State v. Martel*, 2003 WI 70, ¶8, 262 Wis. 2d 483, 664 N.W.2d 69.

¶14 When we construe a statute, we begin with the language of the statute and give it its common meaning, interpreting it reasonably to avoid absurd or unreasonable results. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely related statutes. *Id.*, ¶46. We also consider the scope, context, and purpose of the statute insofar as they are ascertainable from the text and structure of the statute itself. *Id.*, ¶48. If, employing these principles, we conclude the statutory language has a plain meaning, then we apply the statute according to that plain meaning. *Id.*, ¶46.

¶15 We begin with some background on WIS. STAT. § 973.048(1m). This section provides:

(1m) Except as provided in sub. (2m), if a court imposes a sentence or places a person on probation for any violation, or for the solicitation, conspiracy, or attempt to commit any violation, under ch. 940, 944, or 948 or ss. 942.08 or 943.01 to 943.15, the court may require the person to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that

it would be in the interest of public protection to have the person report under s. 301.45.

As the court in *Martel* has explained, this subsection gives the circuit court discretion to require sex-offender registration for “certain non-sex crimes” if “the court determines that the underlying conduct was sexually motivated” and that it would be in the interest of public protection. 262 Wis. 2d 483, ¶17. This is in contrast to the following subsection, § 973.048(2m), which *requires* the court to order sex-offender registration for crimes that are defined as “sex offenses” in the sex-offender registration statute, WIS. STAT. § 301.45(1d)(b).<sup>5</sup> *Id.* at ¶¶16-17.

¶16 Thus, the plain language of WIS. STAT. § 973.048(1m) authorizes the court to require sex-offender registration if the two statutory criteria—sexual motivation and public protection—are met, even if the crime for which the defendant is being sentenced does not contain any element involving sexual conduct. For example, WIS. STAT. §§ 943.01-943.15 penalize damage to property and trespass. More to the point in this case, stalking under WIS. STAT. § 940.32(2), which is contained in WIS. STAT. ch. 940 and therefore plainly

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<sup>5</sup> WISCONSIN STAT. § 973.048(2m) provides:

(2m) If a court imposes a sentence or places a person on probation for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, or of s. 940.30 or 940.31 if the victim was a minor and the person was not the victim’s parent, the court shall require the person to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under s. 301.45 (1m).

The crimes listed in WIS. STAT. § 973.048(2m), also listed in WIS. STAT. § 301.45(1d)(b), “encompass sex crimes against adults and children, as well as certain child abduction crimes.” *State v. Martel*, 2003 WI 70 ¶¶11, 17, 262 Wis. 2d 483, 664 N.W.2d 69.



covered by § 973.048(1m), does not require sexual conduct. The elements of stalking under § 940.32(2) are:

(2) Whoever meets all of the following criteria is guilty of a Class I felony:

(a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

(b) The actor knows or should know that at least one of the acts that constitute the course of conduct will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's acts cause the specific person to suffer serious emotional distress or induce fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

¶17 We therefore agree with the State that § 973.048(1m) does not require that conduct constituting the enumerated crimes involve sexual conduct as long as the conduct is sexually motivated. We do not understand Engebretson to argue otherwise.

¶18 With this background, we turn to the definition of sexually motivated in WIS. STAT. § 980.01(5). This section provides:

(5) "Sexually motivated" means that one of the purposes for an act is for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

Beginning with the language of the statute, we see that "one of the purposes of an act" must be one of the four identified purposes: "for the actor's sexual arousal or gratification or for the sexual humiliation or degradation of the victim." Read in

the context of WIS. STAT. § 973.048(1m), “an act” plainly means an act included in the “underlying conduct” for which the person is sentenced<sup>6</sup> under § 973.048. Although “the victim” follows the phrase “or for the sexual humiliation or degradation of ...,” the only reasonable construction is that the person from whom the actor obtains, or seeks to obtain, “sexual arousal or gratification” is the victim of the “act.” The phrase “of the victim” follows “for the sexual humiliation or degradation” because, according to common English usage, the latter phrase requires a prepositional phrase explaining the object of the humiliating and degrading conduct, while the phrase “for the actor’s sexual arousal or gratification,” does not. However, there is nothing in the text of the statute to suggest that, if the purpose of “an act” is for sexual arousal or gratification rather than for sexual humiliation or degradation, the legislature intended that someone other than the victim of the act could be the person from whom the defendant sought to obtain sexual arousal or gratification.

¶19 The State asserts that the “statutes do not expressly require the [object] of the defendant’s sexual motivation to be the victim of the predicate offense,” but it does not support this assertion with an analysis of the statutory language employing the principles of statutory construction. The State’s construction raises the critical question: what are the boundaries of “sexual motivation” if the enumerated purposes in WIS. STAT. § 980.01(5) are not limited to the victim of the crime for which sentence is imposed? But the State does not answer this question and we see no basis in the text for defining those boundaries.

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<sup>6</sup> WISCONSIN STAT. § 973.048(1m) applies when “a court imposes a sentence or places a person on probation....” Rather than repeating the entire phrase in this opinion, we use the term “sentence” to include being placed on probation.

¶20 Accordingly, we conclude that the person from whom the defendant seeks to obtain the sexual arousal or gratification that motivates the defendant must be the victim, or a victim, of the crime for which the defendant is sentenced under WIS. STAT. § 973.048(1m). We say “a victim” because, although it may be usual for a separate crime to be charged for each victim, it would be absurd for the legislature to intend by the use of “the victim” in WIS. STAT. § 980.01(5) to limit consideration of motivation to only one victim or to exclude crimes that may have more than one victim.

¶21 In this case, the parties do not dispute that Kristi H. is a victim of the stalking crime and that there is no evidence that Engebretson’s stalking conduct was for the purpose of sexual gratification related to Kristi H. Therefore, the remaining issues concern Timothy.

## II. Timothy as Victim of Stalking Conduct

¶22 We understand the circuit court to have viewed Timothy (and other members of the family) as a victim of the stalking conduct, not just Kristi H. In the circuit court, Engebretson’s counsel stated that, although the amended information refers only to Kristi H., “[in the] stalking statute the victim does include the entire family.” Counsel was presumably referring to the fact that the elements of stalking encompass the situation in which the course of conduct reasonably causes the person against whom it is directed to fear death or bodily injury of family members; the person need not fear for his or her own safety. *See* WIS. STAT. § 940.32(2). The amended complaint illustrates just such a situation. The most recent incidents alleged are Engebretson’s statements to Daniel, Kristi H.’s youngest son, that he would have Daniel beat up and Engebretson’s statements to a third party that he wanted to kill Timothy.

¶23 In addition, the injunction violations, also alleged as part of the course of conduct in the amended complaint, involve Kristi H.'s family, including Timothy. According to the information Engebretson provided with his postconviction motion, there were two convictions resulting from violations of the injunction: in one incident he followed Kristi H. and her sons from place-to-place, and in another he rode on his bicycle past their house.<sup>7</sup> Thus, a reasonable reading of the amended complaint and the information Engebretson provided is that the conduct that was the basis for the stalking conviction was directed at not only Kristi H. but also Timothy (and other family members).

¶24 In his supplemental brief on appeal, Engebretson may be suggesting that Timothy was not the victim of the stalking conduct. If so, that appears to be inconsistent with the position he took in the circuit court. In addition, he does not develop an argument on appeal to explain why the court either erred as a matter of law or erroneously exercised its discretion in determining that Timothy was a victim of the stalking conduct. Accordingly, we will not disturb that determination.

### III. Connection Between Criminal Conduct and Sexual Motivation

¶25 Engebretson contends the circuit court erred in determining that his stalking conduct was sexually motivated within the meaning of WIS. STAT.

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<sup>7</sup> The amended complaint alleged four violations of the injunction, but in Engebretson's postconviction motion he asserted that only two alleged violations resulted in convictions, and the documents he submitted appear to support this. He makes the same point on appeal and the State does not dispute it. Because we need consider only the two convictions to conclude that Timothy was the victim of the stalking conduct, we do not discuss the other two alleged violations here. However, we do consider the other two alleged violations in discussing Engebretson's motivation. *See* ¶¶36-37.

§ 980.01(5) because, he asserts, that term should be reserved for situations where the criminal conduct has a more direct relationship to sexual gratification. As we understand this argument, the contention is that the court applied an incorrect construction of § 980.01(5) and WIS. STAT. § 973.048(1m). Although the overall decision to order sex-offender registration lies within the circuit court’s discretion, the application of an incorrect legal standard constitutes an erroneous exercise of discretion, and we review de novo whether the court has applied the correct legal standard. *See State v. Martel*, 262 Wis. 2d 483, ¶8.

¶26 Engebretson does not develop an argument based on principles of statutory construction to explain why stalking conduct motivated by a desire to continue a sexual relationship that has been rejected is not conduct that has sexual gratification as “one of the purposes.” *See* WIS. STAT. § 980.01(5). Instead, he relies on cases from Wisconsin and other jurisdictions in which there has been a more direct or immediate connection between the criminal conduct and the sexual gratification; and he suggests that these provide a standard we should adopt in construing the statute. The Wisconsin case he cites is *State v. Watson*, 227 Wis. 2d 167, 595 N.W.2d 403 (1999), the one published case we have located applying § 980.01(5) to a crime that does not itself have a sexual element. The crime in *Watson* was false imprisonment and the victim was a woman hitchhiker whom the defendant picked up and brutally hit with a hammer while she was trying to escape, which she eventually did. *Id.*, ¶¶6, 8, 11. The court determined at the probable cause stage of the proceeding under WIS. STAT. ch. 980 that there was sufficient evidence that the crime was sexually motivated.<sup>8</sup> The court took into

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<sup>8</sup> WISCONSIN STAT. ch. 980 governs the commitment of sexually violent persons. False imprisonment, WIS. STAT. § 940.30, is a “sexually violent” crime under WIS. STAT. (continued)

account the circumstances of the crime, the defendant’s history of sex offenses, and his diagnosis of paraphilia (uncontrollable urges for sexual contact with nonconsenting partners).<sup>9</sup> *Id.*, ¶¶91-119. While there is undoubtedly a more immediate connection between the crime and the sexual gratification in *Watson* than there is in this case, the *Watson* court does not suggest that it is setting a standard for construing and applying “sexual motivation” within the meaning of § 980.01(5). That was not the issue in *Watson*: the issue related to the expert’s testimony in offering an opinion on the defendant’s motivation. *See id.*, ¶2.<sup>10</sup>

¶27 The language of WIS. STAT. § 980.01(5) does not convey that there must be a direct or immediate connection between the sexual gratification—to take the category at issue in this case—and the criminal conduct. The legislature uses the term “one of the purposes for an act” to link sexual arousal, gratification, humiliation or degradation” to the criminal conduct. The common meaning of “purpose” is “something set up as an object or end to be attained.” MERRIAM-

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§ 980.01(6)(b) if it is “sexually motivated” as defined in § 980.01(5). *State v. Watson*, 227 Wis. 2d 167, 180 (1999).

<sup>9</sup> Engebretson describes the hammer beating in *Watson* as “in genital area.” The description from the victim’s statement was that he “violently beat her groin area.” *Id.* at ¶11. It is not clear to us that the supreme court considered the area of the beating in concluding there was sufficient evidence of sexual motivation, because this fact is not mentioned in the court’s examination of that evidence. However, our analysis in this opinion would not differ if we read *Watson* as Engebretson apparently does—to attach significance to where the defendant beat the victim in deciding whether he had a sexual motivation in falsely imprisoning her.

<sup>10</sup> Similarly, the three cases Engebretson cites from other jurisdictions are examples of courts finding sexual motivation (having a definition similar to that in WIS. STAT. § 980.01(5)) on the facts of the particular case they do not purport to establish a minimum standard. *See State v. Lopez*, 973 P.2d 802, 803 (Kan. Ct. App. 1998) (offense of attempted aggravated burglary was sexually motivated where the underlying felony was intent to commit a sexual battery); *State v. Whalen*, 588 S.E.2d 677, 679 n.4, (W.Va. 2003) (offense of burglary was sexually motivated when purpose was to take pictures of a girl); *In re Ward*, 131 P.3d 544, 543 (Kan. Ct. App. 2006) (offense of criminal threat was sexually motivated when the threatening telephone calls to young girls had sexual content and the defendant possessed erotic pictures of young girls).

WEBSTER'S COLLEGIATE DICTIONARY at 949 (10th ed. 1997). This common meaning of "purpose" in the context of § 980.01(5) encompasses sexual gratification that is sought as the eventual end of the criminal conduct, as well as sexual gratification that the defendant intends will immediately follow from the criminal conduct.

¶28 We are mindful that we are to interpret statutes so as to avoid unreasonable results. *Kalal*, 271 Wis. 2d 633, ¶46. There is undoubtedly a point at which the connection between the criminal conduct and the intended sexual gratification is so attenuated that it would be unreasonable to conclude that non-sexual criminal conduct was sexually motivated within the meaning of WIS. STAT. § 980.01(5) and, thus, potentially subject to sex-offender registration under WIS. STAT. § 973.048(1m).<sup>11</sup> However, we are not persuaded by Engebretson's argument that this is such a case. Stalking conduct is frequently motivated by a desire for an unwanted relationship. Where that desire involves, as the court found here, a fixated desire to resume an unwanted sexual relationship, we can see no basis in the statutory text for holding as a matter of law that this does not constitute having as "one of the purposes ... the actor's sexual ... gratification" within the meaning of § 980.01(5).

#### IV. Claim of Procedural Deficiencies

¶29 Engebretson contends the court improperly relied on hearsay and an inadequate record in determining that he was motivated by a desire to further a sexual relationship with Timothy. In his supplemental brief he urges us to adopt a

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<sup>11</sup> Whether any constitutional provision requires a particular degree of connection between the criminal conduct and the sexual motivation is not before us.

beyond a reasonable doubt burden of proof and a procedure for courts to follow in deciding whether to require registration under WIS. STAT. § 973.048(1m). We conclude that Engebretson is not entitled to a reversal and remand on these grounds because he did not object to the court's consideration of any particular information and did not request a different procedure in the circuit court.

¶30 As noted above, Engebretson did not object to sex-offender registration at sentencing. When he did object by postconviction motion, he filed a brief and attached documents but did not request an evidentiary hearing. At the beginning of the hearing the court asked if there was anything his attorney wished to bring to the court's attention other than the written submissions, and counsel answered, "[n]o, the written argument is what we were going with." The prosecutor referred to information from the PSI on Engebretson's relationship with Timothy and Engebretson's mental health history, and Engebretson's counsel did not object. Engebretson's argument was that, even if he had an unwanted sexual relationship with Timothy, this did not make his stalking conduct sexually motivated. When at Engebretson's request the court allowed him to make a statement, Engebretson did not refute the statements in the PSI or the statements at the preliminary hearing on Engebretson's relationship with and behavior toward Timothy.

¶31 In the sentencing context the circuit court may consider uncorroborated hearsay so long as the defendant has an opportunity to rebut it, and the circuit court may rely on facts contained in a presentence report that are not challenged by the defendant. *State v. Spears*, 227 Wis. 2d 495, 508, 596 N.W.2d 375 (1999). Engebretson had the opportunity to dispute information in the PSI and the preliminary hearing on his relationship with Timothy, but he chose not to do so. To the extent Engebretson is contending that the court should have



conducted an evidentiary hearing before making any factual determinations, we will not reverse on that ground because Engebretson did not request one and he cites no authority for the proposition that the circuit court was obligated to conduct an evidentiary hearing without a request. *See State v. Lynch*, 2006 WI App 231, ¶¶27, 297 Wis. 2d 51, 724 N.W.2d 656 (where defendant did not sufficiently alert the court to his desire to present evidence on an issue relating to sentencing, we will not reverse based on the absence of an evidentiary hearing).

¶32 For similar reasons we decline Engebretson's request that we establish a burden of proof and a procedure for circuit courts to employ under WIS. STAT. § 973.048(1m). We agree with Engebretson that the fifteen-year or more registration and reporting requirements of WIS. STAT. § 301.45 are serious consequences, and the penalties for violations are significant. *See* § 301.45(2)-(5), (6). There may be valid arguments for requiring particular procedural protections before registration can be required under § 973.048(1m). However, Engebretson did not make this argument in the circuit court and he did not make it on appeal until his reply to the State's brief in response to our order for supplemental briefing on another topic. Thus, neither the circuit court nor the State has had an opportunity to respond. As a general rule, we do not address issues raised for the first time on appeal, *State v. Chapman*, 2008 WI App 5, ¶17, 307 Wis. 2d 232, 744 N.W.2d 889; nor do we address issues raised for the first time in a reply brief. *State v. Chu*, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 643 N.W.2d 878. In addition, Engebretson's argument is cursory and does not adequately explain the legal authority or statutory analysis that requires the procedural protections he seeks.

## V. Court's Factual Basis for Determination of Engebretson's Motivation

¶33 Finally, Engebretson objects to the circuit court's determination that Engebretson's stalking conduct was motivated by a desire to resume a sexual relationship with Timothy because, he asserts, any sexual conduct regarding Timothy was not part of the stalking conduct and was too remote in time. According to Engebretson, the record indicates that it is more likely that revenge or gamesmanship or the desire to intimidate motivated Engebretson's stalking conduct.

¶34 These objections challenge the court's assessment of the factual record before it in the context of the discretionary decision to order sex-offender registration under WIS. STAT. § 973.048(1m) as part of sentencing. We review a discretionary decision made in the context of sentencing as we do all discretionary decisions, affirming if there is a reasonable basis in the record and a logical rationale founded upon the correct legal standard. *See McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971).

¶35 We have already explained that the criminal conduct for which Engebretson was convicted need not be sexual under WIS. STAT. § 973.048(1m), as long as it is sexually motivated—in this case, meaning that one of the purposes was for sexual gratification. Therefore, it is not necessary that sexual conduct involving Timothy be part of the stalking conduct. What is necessary is that the record reasonably supports the circuit court's determination that Engebretson's stalking conduct was motivated by a fixated desire to resume an unwanted sexual relationship with Timothy. We conclude there was.

¶36 The PSI shows that Engebretson had a sexual relationship with Timothy that involved taking advantage of him, that at some point Timothy

wanted to break it off, and that Engebretson did not accept that but instead continued to attempt to have contact with Timothy and his family. As noted above, Engebretson did not dispute this in his statement to the court at the motion hearing. There is additional and consistent information in the preliminary hearing testimony of Kristi H. on the nature of Engebretson's relationship with Timothy. She testified without contradiction that Engebretson had been performing sex acts on Timothy and taking pictures of this. When Timothy tried to break off the relationship, Engebretson told Timothy that if Timothy did not do what he wanted, he would put the photos on the internet.

¶37 We do not agree that Engebretson's relationship with Timothy was too remote in time to provide a motive for the stalking conduct. A reasonable view of the record is that Engebretson began his harassing of Timothy and his family soon after Timothy ended the relationship and continued it, with less frequency during the two years of the injunction and with more frequency once the injunction expired. The two violations of the injunction that led to convictions, as we noted above, involved Timothy in person or his residence. In addition, during this two-year time period there was other harassing conduct of which Timothy was the focus that, while not resulting in a conviction for violating the injunction, could reasonably be viewed as showing a preoccupation with Timothy. One incident was an email to Timothy referring to Engebretson's displeasure with Timothy, purportedly from someone Engebretson knew but which Timothy suspected was from Engebretson. Another was Engebretson's statement to Timothy that "he was taking him back to court."

¶38 Once the two-year harassment injunction expired, within three weeks Engebretson had threatened Timothy's younger brother and told a third party he wanted to kill Timothy. When this evidence is viewed in conjunction

with Engebretson's own admissions to the PSI preparer that he gets too close to people and has trouble letting them go when they want to end the relationship, it reasonably leads to a conclusion that at least one of the purposes of Engebretson's stalking conduct was to induce Timothy to resume a sexual relationship with him.

¶39 Because the circuit court's view of Engebretson's motive has a reasonable basis in the record, we may not disregard it even if there are other reasonable views of his motives. Moreover, even if Engebretson had other motives as he suggests—revenge, gamesmanship, or the desire to intimidate—that does not preclude a determination of sexual motivation because only “one of the purposes” for the stalking conduct must be sexual gratification. *See* WIS. STAT. § 980.01(5). Finally, the motive of “intimidation” is perfectly consistent with the court's view that Engebretson's aim was to induce Timothy to resume an unwanted sexual relationship. Intimidating Timothy and his family was the means to that end.

#### CONCLUSION

¶40 We affirm the circuit court's order that Engebretson register as a sex offender under WIS. STAT. § 973.048(1m).

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

