

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 19, 2010

A. John Voelker
Acting 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. 2009AP3195-CR

Cir. Ct. No. 2000CF518

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY D. WALL,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JEFFREY A. CONEN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Jeremy D. Wall appeals from a reconfinement order entered after the revocation of his extended supervision and from a postconviction order denying his motion seeking a new reconfinement hearing. The issues are whether the circuit court adequately explained its reasons for

imposing the reconfinement period that it did, and whether it explained how that period was the minimum amount of custody necessary to achieve the reconfinement considerations. We conclude that the circuit court considered the relevant factors and adequately explained why the maximum reconfinement period was warranted. Accordingly, we affirm.

BACKGROUND

¶2 In March of 2000, Wall pled guilty to one count of second-degree sexual assault of a child. The circuit court imposed a ten-year sentence, comprised of one year of initial confinement and nine years of extended supervision.

¶3 Wall was released to extended supervision in May of 2001. In September of 2002, he was revoked and reconfined until April of 2003 when he was released. Wall subsequently violated the rules of his supervision and absconded for a period of eighteen months before being arrested. He was revoked a second time and in January of 2006, the circuit court reconfined Wall for two years, four months, and twenty-seven days, in accordance with the Department of Corrections' recommendation that he be reconfined for thirty percent of the time remaining on his original sentence.

¶4 Wall was released in October of 2007. The Department subsequently alleged that he violated the conditions of his extended supervision when he absconded from supervision for approximately ten months, stayed overnight at places without his agent's pre-approval, resided in Cudahy and South Milwaukee in violation of sex offender registration ordinances, failed to register as a sexual offender, and consumed alcohol. Wall was revoked a third time.

¶15 A reconfinement hearing was held in June of 2009. The Department recommended that Wall be reconfined for one year, eight months, and six days, which again amounted to thirty percent of the time remaining on his original sentence. The State asked the circuit court to reconfine Wall for the maximum period of five years, seven months, and thirteen days, based on Wall's history of violating the conditions of his supervision. Wall's attorney asked the court to follow the Department's recommendation. In a statement to the circuit court, Wall, however, asked the court to reconfine him for ten months.

¶16 In rendering its reconfinement decision, the circuit court explained that it had reviewed the Department's reconfinement memo, letters, the presentence investigation report, and the original sentencing transcript. The circuit court considered the nature and severity of the original offense, which it categorized as "quite severe," and noted that although "[i]t appears it was a cooperative set of circumstances[,] ... the victim in that case was under the age of 16 and you had no business being involved with her." The circuit court took into account the absence of major conduct violations in Wall's institutional conduct record. As to Wall's attitude and the nature of the violation of terms and conditions during extended supervision, the circuit court concluded: "You don't follow the rules when you're on extended supervision. Your attitude is pretty cavalier at this point, and that is, well, I absconded for 10 months so I guess I'll just go back for another 10 months. You don't really realize how serious this is." The court further explained:

As far as rehabilitation is concerned, maybe from committing other crimes such as this there may be some progress made, but the bottom line is, is that you need to follow the rules. And if you don't follow the rules, then it's very easy to slip back into your old ways and reoffend. There's a need for protection of the public.

¶7 The circuit court ordered Wall reconfined for the maximum time available: five years, seven months, and thirteen days. The circuit court denied Wall’s postconviction motion, and he now appeals.

ANALYSIS

¶8 A reconfinement hearing after revocation is akin to a sentencing hearing. *State v. Brown*, 2006 WI 131, ¶20, 298 Wis. 2d 37, 49, 725 N.W.2d 262, 268. A reconfinement decision “involves the circuit court’s discretion, and [on appeal] we review the circuit court’s decision to determine whether that discretion was erroneously exercised.” *Id.*, 2006 WI 131, ¶22, 298 Wis. 2d at 50–51, 725 N.W.2d at 268. An erroneous exercise of discretion occurs ““whenever it appears that no discretion was exercised in its imposition [of the sentence] or discretion was exercised without the underpinnings of an explained judicial reasoning process.”” *Id.*, 2006 WI 131, ¶22, 298 Wis. 2d at 51, 725 N.W.2d at 268 (citation omitted; brackets in *Brown*).

In making reconfinement decisions, we expect that circuit courts will usually consider the nature and severity of the original offense, the [defendant’s] institutional conduct record, as well as the amount of incarceration necessary to protect the public from the risk of further criminal activity, taking into account the defendant’s conduct and the nature of the violation of terms and conditions during extended supervision. The reconfinement period imposed should be the minimum amount that is necessary to protect the public, to prevent the depreciation of the seriousness of the offense, and to meet the defendant’s rehabilitative needs.

....

Other factors that may be relevant and appropriate, depending on the circumstances, for a circuit court to consider in making reconfinement decisions include consideration of the defendant’s record, attitude, and capacity for rehabilitation, and the rehabilitative goals to be accomplished by imprisonment for the time period in

question in relation to the time left on the [defendant's] original sentence.

Id., 2006 WI 131, ¶¶34, 36, 298 Wis. 2d at 56–57, 725 N.W.2d at 271, 272 (citations omitted).

¶9 The factors that apply in a given case vary as does the weight to be given to a particular factor in a particular case. *Id.*, 2006 WI 131, ¶39, 298 Wis. 2d at 58, 725 N.W.2d at 272. If the reconfinement court considered the relevant factors, and not irrelevant or improper ones, and the decision was within the statutory limits, the sentence will be upheld on appeal unless it “is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Id.*, 2006 WI 131, ¶22, 298 Wis. 2d at 51, 725 N.W.2d at 268 (citation and one set of internal quotation marks omitted).

¶10 Wall contends that the circuit court did not adequately explain why reconfinement for the entire maximum allowable period of time was necessary. We reject Wall’s contention. The circuit court remarked on a number of the factors identified in *Brown*. The circuit court identified at the outset of the reconfinement hearing that the proceeding was Wall’s third reconfinement hearing. The circuit court explained that it had reviewed, among other things, the original sentencing transcript. *See id.*, 2006 WI 131, ¶38, 298 Wis. 2d at 58, 725 N.W.2d at 272 (“The original sentencing transcript is an important source of information.”). It then considered the nature and severity of Wall’s original offense, his institutional conduct record, the nature of his violations of the terms and conditions of extended supervision, which included Wall’s absconding for ten months, along with Wall’s attitude and capacity for rehabilitation. In its postconviction order denying Wall’s request for a new reconfinement hearing, the

circuit court re-emphasized its consideration of these factors in deciding to follow the State's recommendation for the maximum reconfinement term. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243, 247 (Ct. App. 1994) (The circuit court has another opportunity to explain its sentence when challenged by postconviction motion.).

¶11 Wall further contends that circuit court failed to explain why the reconfinement period imposed was the minimum confinement consistent with the three primary sentencing goals: “to protect the public, to prevent depreciation of the seriousness of the offense, and to meet the defendant’s rehabilitative needs.” *See Brown*, 2006 WI 131, ¶34, 298 Wis. 2d at 57, 725 N.W.2d at 271 (citations omitted). Again, we disagree.

¶12 The circuit court noted that Wall was originally sentenced to one year of initial confinement and nine years of extended supervision, which was “a break, [the original sentencing court] gave you the one year as a taste of prison and nine years to keep an eye on you.... And all you really need to do is follow the very simple rules.” The circuit court continued:

I understand sex offender supervision is very difficult in that they require that you follow the rules to the T, but the rules are not very difficult to follow.

Meet with your agent, stay out of trouble, get a job, do what you are supposed to do. You can't even do that. And now you are back a third time.... [S]upervision is there for people who actually care about supervision and want to do something to better themselves, not just to come and go as they please and figure if they show up that'll be fine. If not, what's the worst thing that will happen? The judge will just slap me on the wrist and give me 10 months. That's not going to happen.

¶13 The circuit court gave a reasoned explanation for its reconfinement decision. *See id.*, 2006 WI 131, ¶29, 298 Wis. 2d at 55, 725 N.W.2d at 270.

Wall's wish that the circuit court would have exercised its discretion differently does not constitute an erroneous exercise of discretion. *See Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16, 20–21 (1981) (our inquiry is whether discretion was exercised, not whether it could have been exercised differently).

By the Court.—Orders affirmed.

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

