

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 28, 2009

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. 2008AP2840-CR

Cir. Ct. No. 2007CF5891

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANGEL A. MERCADO-TORRES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. A jury found Angel A. Mercado-Torres guilty of two counts of first-degree sexual assault of a child. See WIS. STAT. § 948.02(1). The circuit court imposed consecutive twenty-year sentences, each comprised of fifteen years of initial confinement and five years of extended supervision. The

only issue on appeal is whether the circuit court properly exercised its sentencing discretion. Because we conclude that it did, we affirm.

¶2 Mercado-Torres was convicted of sexually assaulting Yelitza T.-G. and Yanitza T.-G., the two young daughters of his then-girlfriend. At the time of the assaults, Yelitza was between eight and nine years old, and Yanitza was between seven and eight years old. The girls testified that Mercado-Torres sexually assaulted them on repeated occasions while their mother was either working or sleeping.

¶3 Mercado-Torres contends that the circuit court failed to explain why the imposed sentence—two twenty-year consecutive sentences—was warranted under the facts and circumstances of the case. Mercado-Torres argues that the court did not set forth a “nexus between the factors considered and the sentence imposed.” Upon review of the sentencing transcript, we conclude that the circuit court adequately explained the sentences.

¶4 Sentencing is within the discretion of the circuit court, and our review is limited to determining whether the circuit court erroneously exercised that discretion. *McCleary v. State*, 49 Wis. 2d 263, 277–278, 182 N.W.2d 512, 519–520 (1971); *see also State v. Gallion*, 2004 WI 42, ¶68, 270 Wis. 2d 535, 569, 678 N.W.2d 197, 212 (“circuit court possesses wide discretion in determining what factors are relevant to its sentencing decision”). The three primary factors a sentencing court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633, 639 (1984). The court may also consider the following factors:

The court may also consider the following factors: (1) Past record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant's personality, character and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant's culpability; (7) defendant's demeanor at trial; (8) defendant's age, educational background and employment record; (9) defendant's remorse, repentance and cooperativeness; (10) defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention.

Id., 119 Wis. 2d at 623–624, 350 N.W.2d at 639 (quoted source omitted); *see also Gallion*, 2004 WI 42, ¶¶59–62, 270 Wis. 2d at 565–566, 678 N.W.2d at 211 (applying the main *McCleary* factors—the seriousness of the crime, the defendant's character, and the need to protect the public—to Gallion's sentencing). The weight given to each of these factors is within the circuit court's discretion. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975).

¶5 A circuit court properly exercises its sentencing discretion when it makes a statement on the record detailing its reasons for “selecting the particular sentence imposed.” *Gallion*, 2004 WI 42, ¶5 n.1, 270 Wis. 2d at 544 n.1, 678 N.W.2d at 201 n.1 (quoted source omitted); *see also* WIS. STAT. § 973.017(10m). It is not, however,

require[d] ... to provide an explanation for the precise number of years chosen. *McCleary* mandates that the court's sentencing discretion be exercised on a “rational and explainable basis[,]” and such discretion “must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.”

State v. Taylor, 2006 WI 22, ¶30, 289 Wis. 2d 34, 52, 710 N.W.2d 466, 476 (quoting *McCleary*, 49 Wis. 2d at 276–277, 182 N.W.2d at 519) (second set of brackets in *Taylor*); *see also Gallion*, 2004 WI 42, ¶49, 270 Wis. 2d at 562, 678

N.W.2d at 209 (court must explain general range for sentence imposed). The circuit court's sentencing comments satisfy this standard.

¶6 The circuit court considered the gravity of the crimes, particularly the effect of the assaults on the victims. The court noted that Mercado-Torres committed “numerous acts over a period of time” when the girls were seven and eight years old. The court stated the offenses were aggravated because the victims will have “emotional scars” for their entire life. The court specifically referred to the two girls’ victim impact statements in which they described their feelings as “sad, mad, [and] scared.”

¶7 The circuit court considered Mercado-Torres’s character, including his criminal record that included a prior conviction for second-degree sexual assault of a child, convictions for criminal damage to property and attempted arson, and several violations of domestic abuse injunctions. The court noted that Mercado-Torres had been on community supervision on two previous occasions and, although he had not been revoked, it was “clear that [Mercado-Torres] does not take the order of the court seriously as he continues to engage in behavior of a criminal nature.” The court stated that Mercado-Torres has an “assaultive criminal history” and “consistently places blame on others.” The court acknowledged that Mercado-Torres had some employment history, but he “needs significant work on his academic and vocational skills.”

¶8 The circuit court considered the need to protect the community. The court said there was “no doubt” that Mercado-Torres posed a risk to the community if he were not incarcerated. The court stated that the “primary objective” of its sentence was punishment, which needed to be lengthy because of the risk to the community and Mercado-Torres’s needs. The court stated that

consecutive sentences were being imposed because there were two victims and Mercado-Torres committed multiple assaultive acts.

¶9 A defendant is not entitled to an explanation of how each factor considered by the court translates into a specific term of confinement. *See State v. Fisher*, 2005 WI App 175, ¶¶21–22, 285 Wis. 2d 433, 447–448, 702 N.W.2d 56, 63. The circuit court fully explained Mercado-Torres’s sentence and the reasons for it.

By the Court.—Judgment and order affirmed.

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

