STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2014AP2855-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ERIBERTO VALADEZ,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE WILLIAM S. POCAN, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF PLAINTIFF-RESPONDENT

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C O U R T O F A P P E A L S

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ISSUES PRESENTED

1. Was Valadez in custody when a detective questioned him without providing him with his *Miranda*[1]

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

warnings during the execution of a search warrant at Valadez's home?

The circuit court answered: No (48:50-54; R-Ap. 106-10).

2. Was Valadez entitled to disclosure of a confidential informer's identity on the ground that it was necessary to the presentation of his defense at trial?

The circuit court answered: No (48:18-19; R-Ap. 104-05).

3. Did the circuit court impermissibly consider Valadez's exercise of his right to a jury trial when it sentenced Valadez?

The circuit court did not answer.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State believes that neither oral argument nor publication is necessary. The parties have fully developed the arguments in their briefs and the issues presented involve the application of well-settled legal principles to the facts.

SUPPLEMENTAL STATEMENT OF THE CASE AND THE FACTS

The State will supplement Valadez's statement of the case and the facts as appropriate in its argument.

NOTE ON SUPPLEMENTAL APPENDIX

Wisconsin Stat. § 809.19(2)(a) requires the appellant's brief to include an appendix containing, among other things,

> [T]he findings or opinion of the circuit court, limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

Wis. Stat. § 809.19(2)(a).

The appendix to Valadez's brief-in-chief contains only the record on appeal and the judgment of conviction (41). It does not include the transcripts that show the circuit court's reasoning regarding the issues Valadez raises on appeal. Relevant portions of the transcripts from the motion hearing (48:1, 16-19, 50-54; R-Ap. 101-10) and the sentencing hearing (55:1, 20-29; R-Ap. 111-21) are included in the State's appendix.

SUMMARY OF THE ARGUMENT

Valadez raises three claims on appeal. First, he asserts that he was in custody when a detective questioned him following the execution of a search warrant at his home. Because Valadez had not been *Mirandized* when the detective questioned him, he contends that the circuit court should have suppressed his statement. Valadez's brief at 13-18. Because the circuit court found that Valadez was not in custody, the detective was not required to give *Miranda* warnings to Valadez (48:50-54; R-Ap. 106-10). Further, any error in admitting his limited statement was harmless.

Second, Valadez also contends that the circuit court erred when it denied his motion for disclosure of the confidential informer's identity. Valadez's brief at 18-23. The informer's testimony would not have created a reasonable doubt as to Valadez's guilt. Instead, it would

have undermined his defense and implicated him in drug sales at his home. The circuit court properly denied Valadez's motion (48:18-19; R-Ap. 104-05).

Third, Valadez argues that the circuit court impermissibly considered Valadez's exercise of his right to a jury trial when it sentenced Valadez. Valadez's brief at 23-25. Valadez forfeited his right to appeal this issue because he did not preserve it for appeal. Further, the circuit court appropriately exercised its sentencing discretion. It did not punish Valadez for exercising his right to trial, but in part for his failure to fully accept responsibility for his conduct.

ARGUMENT

I. Because Valadez was not in custody when the detective questioned him, the circuit court properly denied Valadez's motion to suppress his statement.

Valadez asserts that the officers should have advised him of his *Miranda* warnings when they questioned him during the execution of a search warrant at his home. Valadez's brief at 13-18. Relying upon *State v. Goetz*, 2001 WI App 294, 249 Wis. 2d 380, 638 N.W.2d 386, the circuit court determined that Valadez was not in custody when he answered the detective's questions. The circuit court denied Valadez's motion to suppress (48:50-54; R-Ap. 106-10).

A. General legal principles related to questioning during the execution of search warrants.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court recognized the right to have counsel present during custodial interrogation to safeguard the right against compulsory self-incrimination under the Fifth and Fourteenth Amendments to the U. S. Constitution. When a defendant is subjected to "custodial interrogation,"

the state must provide procedural safeguards (i.e., administration of "*Miranda* warnings") to a defendant that protects his or her privilege against self-incrimination under the Fifth and Fourteenth Amendments. *See State v. Hambly*, 2008 WI 10, ¶ 24 & n.18, 307 Wis. 2d 98, 745 N.W.2d 48.

"A person is in custody for purposes of *Miranda* if the person is either formally arrested or has suffered a restraint on freedom of movement of the degree associated with a formal arrest." *Goetz*, 249 Wis. 2d 380, ¶ 11, (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). In assessing whether someone is in custody, a court must decide whether a reasonable person in the suspect's position would have considered himself or herself to be in custody. *Id.* This is an objective standard rather than one based upon the subjective views of either the interrogating officers or the person being questioned. *Stansbury v. California*, 511 U.S. 318, 323 (1994).

During the execution of a search warrant, officers may detain the occupants of the premises. A detention under these circumstances is "substantially less intrusive than an arrest." *Michigan v. Summers*, 452 U.S. 692, 702 (1981). Detention in a person's home "could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station." *Id*. As this court has recognized, an individual detained during a search warrant's execution has not suffered a "'restraint on freedom of movement' of the degree associated with a formal arrest," and is not in custody for *Miranda* purposes. *Goetz*, 249 Wis. 2d 380, ¶ 12, (quoting *Beheler*, 463 U.S. at 1125).

In *Goetz*, officers executed a search warrant at Goetz's home. *Id.* ¶ 2. Officers informed Goetz that they wanted to speak to her but that she was not under arrest. *Id.* ¶ 3. Officers directed Goetz to sit at the table and asked her several questions. Goetz told the officer that she was unaware of any marijuana in the home, but that they might

find some in the bedroom. *Id.* ¶ 4. Officers handcuffed Goetz after she showed them the marijuana in a bedroom. Goetz had declined to make a further statement without an attorney. Officers did not question her further. At no time did the officers read Goetz her *Miranda* rights. *Id.* ¶ 5.

Relying upon *Summers*, this court concluded that while the officers had detained Goetz, she was not in custody. *Goetz*, 249 Wis. 2d 380, ¶¶ 12-13. "This was not a situation where a reasonable person would have considered her freedom of movement to be restrained to the degree associated with a formal arrest." *Id.* ¶ 13.

The State's burden at a Miranda hearing. The State must establish by a preponderance of the evidence whether a custodial interrogation occurred that required the officer to administer *Miranda* warnings. *State v. Armstrong*, 223 Wis. 2d 331, 345-46, 588 N.W.2d 606 (1999).

The appellate standard of review. On review of the circuit court's denial of the suppression motion, this court will uphold the circuit court's findings of historical fact unless they are clearly erroneous. It then independently reviews the application of constitutional principles to those facts as found. *State v. Stevens*, 2012 WI 97, ¶ 36, 343 Wis. 2d 157, 822 N.W.2d 79.

B. A reasonable person in Valadez's position would not have considered his freedom of movement to be restrained to the degree associated with a formal arrest.

While officers detained Valadez during the execution of a search warrant, the record supports the circuit court's finding that Valadez was not in custody for *Miranda* purposes.

Milwaukee Police Detective Michael Slomczewski obtained a no-knock search warrant for the home at 1608 S. Union Street in Milwaukee (48:21). Tactical squad officers forcibly entered the home, announcing their presence as they did so (48:22). Slomczewski could not recall if entry team officers had drawn their weapons during their entry (48:30). Approximately ten minutes after their entry, tactical squad officers gave an all clear sign. Slomczewski and the search team entered the home. The tactical squad officers then left the area (48:24, 32).

Upon entry, Slomczewski saw Valadez and his four-year-old child in the living room (48:22). Slomczewski used cutters to remove the flexible handcuffs that the tactical squad officers had placed on Valadez during entry. Slomczewski also read the search warrant to Valadez (48:24). Somczewski did not escort Valadez into the kitchen but simply stated "[H]ey, let's go in the dining room and talk" (48:32). Slomczewski and Valadez then walked into the dining room. Valadez sat in a chair against the wall while Slomczewski sat at the table (48:24). Slomczewski allowed Valadez's child to join them in case Valadez needed to tend to him. The child played while Slomczewski spoke with Valadez (48:25).

Slomczewski asked Valadez questions related to how long he lived at the house, his rent, and which bedroom was his. The conversation lasted only a few minutes. Slomczewski described it as small-talk. Slomczewski had known Valadez for some time through prior police contacts (48:26). When they spoke, Slomczewski was unaware of the presence of any drugs or contraband in the residence (48:25). Slomczewski did not read Valadez his *Miranda* warnings. Slomczewski made no remarks to Valadez as to whether he was in custody (48:33).

The circuit court correctly found that Valadez was not in custody when Slomczewski spoke with him. Therefore, Slomczewski was not required to give Valadez *Miranda* warnings (48:54; R-Ap. 110). Slomczewski had removed Valadez's restraints (48:52; R-Ap. 108). Valadez was no longer restrained in a manner associated with a formal arrest. The circuit court noted that the removal of Valadez's handcuffs would have prompted a reasonable person to believe that he or she were not under arrest (48:52-53; R-Ap. 108-09).

Other circumstances surrounding the interview support the circuit court's conclusion that Valadez was not in custody. After Slomczewski removed the handcuffs, Slomczewski and Valadez walked to the dining room and sat down in chairs. Valadez's son was present during their conversation. The circuit court described the conversation as small talk (48:53; R-Ap. 109). The questions related to Valadez's employment and connection to the residence. Nothing in the record suggests that any of the officers brandished weapons or engaged in other threatening behavior during this conversation. Further, when they spoke, officers had not yet recovered any contraband (48:53; R-Ap. 109). At the time of the interview, Slomczewski lacked any basis to arrest Valadez.

The circumstances surrounding Slomczweski's brief, non-accusatory conversation with Valadez would not have caused a reasonable person in Valadez's position to believe that his freedom of movement had been restrained to a degree associated with a formal arrest. Because Valadez was not in custody, the circuit court properly denied his motion to suppress his statement (48:54; R-Ap. 110).

C. Any error in admitting Valadez's statement was harmless.

The trial use of a defendant's statement taken in violation of *Miranda* may be harmless error. The State must demonstrate beyond a reasonable doubt "that the jury would have arrived at the same verdict had the error not occurred." *State v. Martin*, 2012 WI 96, ¶ 45, 343 Wis. 2d 278, 816 N.W.2d 270 (emphasis omitted). An error is harmless if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty had the error not occurred. *State v. Harvey*, 2002 WI 93, ¶ 46, 254 Wis. 2d 442, 647 N.W.2d 189.

Here, Valadez moved to suppress his statement to Slomcziewski that he occupied the bedroom in the home where officers found cocaine (14:2). At trial, the State presented other strong evidence linking Valadez to the cocaine and other evidence related to drug trafficking seized from his home.

Valadez was connected to the Union Street home. Upon entry, officers observed two occupants inside the home. Valdadez was seated in the living room with his young son nearby (51:59-60; 52:70). In a subsequent, properly *Mirandized* statement, Valadez acknowledged that he sometimes lived at the home (52:94).

Officer Dustin Frank searched the southwest bedroom (51:61). Inside a men's tennis shoe, Frank found a clear plastic bag containing suspected crack cocaine.[2] The shoe was lying in the middle of the floor (51:63-64). Inside a child's sneaker, officers recovered $450 in currency (51:64-65; 52:79-80). Inside a shoe box, Frank also found numerous photographs of Valadez along with WE Energy bills and a

[2] Wisconsin State Crime Laboratory analyst Laura Hedden identified the white material as cocaine base with a weight of 6.0977 grams (52:4-11).

Wisconsin ID with his name on them (51:64, 70). The WE Energy bills were from 2012 and included Valadez's name and the Union Street address (51:74-75; 52:38). Two $100 bills were folded up inside the WE Energy bill (51:64; 52:78).

Officers found drug-related paraphernalia in the common areas along with other material linking Valadez to the home. Officer Christopher Conway searched a china cabinet in the living room. In a drawer, the officers identified a number of items linking both Valadez and his brother, Miguel Valadez ("Miguel") to the residence. These items included photographs of both brothers (52:32-33). A WE Energy bill had Valadez's name and the Union Street address on it (52:38). Officers also found a gram scale with white powdery residue that is commonly used for packaging and selling cocaine (52:33-34). In addition, on top of the cabinet, officers also recovered plastic bags used for packing cocaine (52:34-35).

Officer Andrew Molina searched the southeast bedroom, which was to the left of the bathroom. In the bedroom, Molina observed a toddler's bed, toys, and clothing, and men's clothing (52:21). In the southeast bedroom, Molina saw a Wisconsin state ID that had Miguel Valadez's name with an Orchard Street address on it (52:23).

At the conclusion of the search, officers arrested Valadez (48:34). Following Valadez's arrest and transportation to a district station, Detective Slomczewski informed Valadez of his *Miranda* rights and interviewed him (52:93). Valadez denied knowing anything about the cocaine (52:100). When Slomczewski asked Valadez if he was willing to cooperate, Valadez responded "this is the life that I chose to live, Slomczewski, I have to deal with the consequences" (52:96). When Slomczewski spoke to Valadez about prison, Valadez "very nonchalantly, kind of kicked back in his chair

without a care in the world" and stated "does it look like I care" (52:97). In conjunction with the other seized evidence, a jury could reasonably conclude that Valadez's *Mirandized* statements constituted an implicit admission of guilt.

Thus, even without consideration of the statement that Valadez challenges, the record supports the jury's guilty verdict beyond a reasonable doubt. Any error in admitting Valadez's statement that he occupied the bedroom where officers found cocaine was harmless.

II. The circuit court properly denied Valadez's motion for disclosure of the confidential informer's identity.

Valadez asserts that the circuit court erred when it denied his motion for disclosure of the informer's identity (15; 16). The State opposed Valadez's motion (18) and submitted material under seal for the circuit court's in camera review (22). Following its review, the circuit court exercised its discretion and denied Valadez's motion (48:18-19; R-Ap. 104-05). The circuit court applied the proper legal standard when it denied Valadez's motion.

A. General legal principles guiding a circuit court's decision to order disclosure of a confidential informer's identity.

The informer privilege under Wis. Stat. § 905.10. A criminal defendant does not have an absolute constitutional right to learn the identity of an informer. *State v. Vanmanivong*, 2003 WI 41, ¶ 30, 261 Wis. 2d 202, 661 N.W.2d 76. Wisconsin Stat. § 905.10(1) codifies the general privilege protecting the identity of a confidential informer. Wisconsin Stat. § 905.10(3) recognizes several exceptions to the privilege. Here, Valadez sought disclosure

of the confidential informer's identity because he believed that the "informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence . . . ." Wis. Stat. § 905.10(3)(b).

Wisconsin Stat. § 905.10(3)(b) establishes a two-step process that a circuit court must follow before it may order the State to disclose a confidential informer's identity. First, the defendant "must show that there is a reasonable possibility that the informer may be able to provide testimony necessary to the defendant's theory of defense." *State v. Nellessen*, 2014 WI 84, ¶ 36, ___ Wis. 2d ___, 849 N.W.2d 654. A defendant's initial showing must not be speculative but be based on a "reasonable possibility, grounded in the facts and circumstances of the case." *Id.* ¶ 2.

Second, if a defendant satisfies this threshold burden, Wis. Stat. § 905.10(3)(b) requires the circuit court to conduct an in camera review. Through this in camera process, the State may provide the circuit court with evidence relevant to a determination of whether the informer can in fact provide testimony relevant to a fair determination of guilt or innocence. The circuit court should order disclosure "[i]f, and only if, the court determines that an informer's testimony is necessary to the defense in that it could create a reasonable doubt of the defendant's guilt in the juror's minds . . . ." *Vanmanivong*, 261 Wis. 2d 202, ¶ 32.

Standard of review. When this court reviews a circuit court's decision to deny disclosure of an informer's identity following an in camera review, it must determine whether the circuit court properly exercised its discretion. *Id.* ¶ 15. To the extent that the circuit court's decision implicates a defendant's due process right to a fair trial, the circuit court's decision presents a question of law that this court reviews de novo. *Id.* ¶ 17.

B. The circuit court properly denied Valadez's motion to disclose the confidential informer's identity.

Valadez moved for disclosure of the identity of the confidential informer whose information provided probable cause to obtain a search warrant of Valadez's South Union Street residence (15; 16). According to the search warrant affidavit, the informer stated that two individuals, "Bono" and "Choppa" resided at this residence. Based upon the informer's review of police booking photographs, officers identified "Choppa" as the defendant, Eriberto Valadez and "Bono" as Miguel Valadez. The informer knew that Valadez and Miguel were brothers. The informer observed two firearms in Miguel's bedroom. The informer also reported that he had previously seen cocaine in the residence. In addition, the informer stated that Miguel sold cocaine to people, and that he had packaged it in individual corner bags (16:10). The affidavit did not allege that Eriberto Valadez possessed or distributed any cocaine.

Valadez asserted that disclosure of the informer's identity would aid his defense by allowing him to demonstrate that the seized cocaine belonged to Miguel rather than him (16:5; 47:8-11). The circuit court stated that if Valadez "can articulate even a possibility that this information would be helpful, then the Court has to go through the exercise" (47:15).[3] The circuit court found that Valadez had met his burden and ordered an in camera review (47:15).

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[3] The circuit court appears to have based its decision to grant an in camera review based upon this court's reasoning in *State v. Nellessen*, 2013 WI App 46, ¶ 14, 347 Wis. 2d 537, 830 N.W.2d 266, *reversed by* 2014 WI 84, ¶ 36, ___ Wis. 2d ___, 849 N.W.2d 654. The supreme court had not yet decided *Nellessen* when the circuit court addressed Valadez's motion. The supreme court subsequently clarified the standard, requiring more than merely a showing of any possibility but a showing of a "reasonable possibility, grounded in the facts and circumstances of the case." *Nellessen*, 2014 WI 84, ¶ 2.

The State provided materials to the circuit court under seal for its review (20; 21; 22). The circuit court subsequently reviewed the State's submissions. It found that nothing in the submitted materials would assist Valadez. In fact, the circuit court noted that the submitted material implicated both Valadez and Miguel in the cocaine sales. Balancing the State's interest with Valadez's interest, the circuit court held that it would be inappropriate to order disclosure of the informer's identity (48:17-18; R-Ap. 103-04).

The material that the circuit court reviewed in camera suggested that both Valadez and Miguel participated in the distribution of cocaine from the residence. Disclosure here would not have supported Valadez's theory of defense, i.e., that he did not possess the cocaine seized from the Union Street home. Applying the *Vanmanivong* standard, nothing in the material that the circuit court reviewed would have created a reasonable doubt about Valadez's guilt in the juror's minds. 261 Wis. 2d at ¶ 32. The circuit court properly exercised its discretion when it denied Valadez's motion for disclosure of the informer's identity.

III. The circuit court did not penalize Valadez for exercising his right to a jury trial.

Valadez asserts that the circuit court violated his due process rights when it sentenced Valadez based upon his exercise of his right to a jury trial. Valadez's brief at 23. The record does not support Valadez's claim.

A. Valadez did not raise his sentencing claim before the circuit court and has forfeited his right to raise it on appeal.

Valadez did not raise the sentencing issue with the circuit court. As a general rule, an appellate court will not consider issues raised for the first time on appeal. Valadez has the burden of establishing through reference to the

record that he raised the issue before the circuit court. *State v. Caban,* 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). A defendant must move for sentence modification in the circuit court before he or she seeks appellate review of the sentence. *State v. Chambers*, 173 Wis. 2d 237, 261, 496 N.W.2d 191 (Ct. App. 1992); *see also* Wis. Stat. § 809.30(2)(h) (requiring a party to file a motion for postconviction relief before filing a notice of appeal unless the issue was previously raised or the issue concerns the sufficiency of the evidence); and Wis. Stat. § 974.02(2).

Valadez did not object to his sentence when the circuit court imposed it. He also did not raise his sentencing claim through a postconviction motion. Valadez has forfeited his right to raise his claim on appeal. *But see Caban,* 210 Wis. 2d at 604, 609, (the forfeiture rule is a rule of administration and this court may decline to apply the rule).

B. General legal principles governing a circuit court's exercise of sentencing discretion.

A circuit court exercises its discretion at sentencing. *State v. Gallion*, 2004 WI 42, ¶ 17, 270 Wis. 2d 535, 678 N.W.2d 197. Appellate review is limited to determining whether the circuit court erroneously exercised that discretion. *Id.* There is a consistent and strong policy against appellate court interference with the circuit court's exercise of its sentencing discretion. *Id.* ¶ 18. The defendant bears the burden of demonstrating that the circuit court based its sentence on clearly irrelevant or improper factors. *Id.* ¶ 72.

C. The circuit court based its sentence on proper sentencing considerations. It did not punish Valadez for exercising his right to a jury trial.

In support of his claim, Valadez relies upon *United States v. Jackson*, 390 U.S. 570 (1968). Valadez's reliance is misplaced. In *Jackson*, the Supreme Court reviewed a provision in the Federal Kidnapping Act that permitted the imposition of the death penalty when an offender exercises his or her right to trial. The Supreme Court held that the death penalty provision imposed an impermissible burden upon a defendant's exercise of his or her right to a jury trial. *Id*. at 571-72.

Unlike *Jackson*, Valadez's case does not involve a statutory scheme that imposes a maximum penalty upon a defendant who exercises his or her right to a jury trial. Here, the circuit court did not even impose the maximum possible penalty authorized by law. The State charged Valadez with a Class E felony, which carries a maximum term of imprisonment of 15 years and a maximum fine of $50,000. Wis. Stat. § 939.50(2)(e). The circuit court only sentenced Valadez to a five-year term of imprisonment that consisted of a three-year term of initial confinement followed by a two-year term of extended supervision (41).

More importantly, the circuit court's sentencing comments do not even remotely suggest that it punished Valadez for exercising his right to trial.

> I look at your degree of involvement. Culpability. I look at your demeanor. I look at your age, education, employment background. I look at whether you're remorseful, accept responsibility, and degree of cooperation.

> And I'm not quite sure what to do with this one, on this factor. Because you say you are remorseful. You say you accept responsibility. But we have a situation where you went to trial and motion alleging that these weren't your crimes.
>
> Today you tell us they are your crimes. I don't know if you're really accepting responsibility or if you believe that's what the court would like to hear.
>
> You've also submitted a letter from a family member that tells me that you're innocent which, again, leads me to believe that you haven't fully accepted the crime, that you and your family are still not accepting. So that bothers me.

(55:22; R-Ap. 114). The circuit court's point is well taken. Before trial, Valadez moved for disclosure of the confidential informer's identity on the theory that the informer might support his theory of defense that Miguel was responsible for the seized cocaine (16:2, 4). At trial, Valadez argued that Miguel likely possessed it (53:52). But at sentencing, Valadez claimed to accept responsibility. Valadez's inconsistent positions prompted the court to question whether Valadez had truly accepted responsibility for his crime.

In fact, the circuit court emphasized that it was not sanctioning Valadez for exercising his right to a jury trial.

> I certainly never penalize anyone for choosing to take their case to trial; but the problem of course is that when you do take a case to trial and in a drug case is you've done just the opposite of what we hope to have; and that is, you accepting responsibility. You've done just the opposite. You sort of dodged responsibility and that concerns me.
>
> . . . .
>
> As a result of all of this, a result of you're not accepting responsibility, I'm not even sure if you really accept responsibility today, and the sort of statements

> that you had made to the officers almost minimizing the significance of incarceration, I just don't believe that this is a case where probation would be appropriate.

(55:24-25; R-Ap. 116-17). The record demonstrates that the circuit court appropriately sentenced Valadez in part for failing to fully accept responsibility for his conduct rather than exercising his right to a jury trial.

Acceptance of responsibility is a legitimate sentencing consideration. *Gallion*, 270 Wis. 2d 535, ¶ 43 n.11 (identifying a variety of sentencing factors including a "defendant's remorse, repentance and cooperativeness"). As long as the sentencing court does not attempt to compel an admission of guilt from an offender, a sentencing court may properly consider an offender's lack of remorse in assessing the offender's rehabilitative and personal deterrence needs. *State v. Wickstrom*, 118 Wis. 2d 339, 355-56, 348 N.W.2d 183 (Ct. App. 1984).

The circuit court followed *Gallion* when it sentenced Valadez. It identified the relevant sentencing standards including the protection of the community, punishment and Valadez's rehabilitative needs (55:20; R-Ap. 112). The circuit court considered Valadez's history and concluded that he had an antisocial or socially undesirable behavior pattern. It also noted Valadez lacked a high school degree or work history. The circuit court noted that Valadez's offense was aggravated because he adversely affected others in the community through his drug trafficking (55:21; R-Ap. 113). By drug trafficking from his home, Valadez exposed his young child to potential drug-related violence (55:23; R-Ap. 115). Finally, as noted above, the circuit court questioned whether Valadez had actually accepted responsibility (55:22; R-Ap. 115). The circuit court adequately explained its sentence and imposed a reasonable sentence. *Gallion*, 270 Wis. 2d 535, ¶¶ 8-9. Under the circumstances, the circuit court did not erroneously exercise its sentencing discretion.

CONCLUSION

For the above reason, the State respectfully requests this court to affirm Valadez's judgment of conviction.

Dated this 21st day of April, 2015.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,560 words.

Dated this 21st day of April, 2015.

_____
Donald V. Latorraca
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 21st day of April, 2015.

_____
Donald V. Latorraca
Assistant Attorney General

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is a supplemental appendix that complies with the content requirements of Wis. Stat. § (Rule) 809.19(2)(a); that is, the record documents contained in the respondent's supplemental appendix fall into one of the categories specified in sub. (2)(a).

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 21st day of April, 2015.

_____

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