

STATE OF WISCONSIN
COURT OF APPEALS

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OF WISCONSIN**

DISTRICT I

Appeal Case No. 2015AP001517-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

MUSTAFA Z. ABDEL-HAMID,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION,
THE HONORABLE BONNIE GORDON PRESIDING, AND
AN ORDER DENYING POST-CONVICTION RELIEF
ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE MICHAEL GUOLEE, PRESIDING

BRIEF 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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BRIEF OF PLAINTIFF-RESPONDENT

ISSUE PRESENTED

Did the circuit court properly exercise its discretion
when the court rejected Abdel-Hamid's request for
expunction?¹

The Circuit Court answered: Yes

¹ Abdel-Hamid incorrectly states the court's response to the issue presented
in his brief.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent, State of Wisconsin, requests neither oral argument nor publication because the briefs should adequately set forth the facts and applicable precedent, and because resolution of this appeal requires only the application of well-established precedent to the facts of the case.

STATUTE INVOLVED²

WIS. STAT. § 973.015 SPECIAL DISPOSITION.

973.015 (1m) (a) 1. Subject to subd. 2. and except as provided in subd. 3., when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. This subsection does not apply to information maintained by the department of transportation regarding a conviction that is required to be included in a record kept under s. 343.23 (2) (a).

2. The court shall order at the time of sentencing that the record be expunged upon successful completion of the sentence if the offense was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under the age of 18 when he or she committed it.

3. No court may order that a record of a conviction for any of the following be expunged:

a. A Class H felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 940.32, 948.03 (2) or (3), or 948.095.

² Unless indicated otherwise, all citations to Wisconsin Statutes refer to the 2013-14 edition.

b. A Class I felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

(b) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record. If the person has been imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department.

(2m) At any time after a person has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for a violation of s. 944.30, a court may, upon the motion of the person, vacate the conviction, adjudication, or finding, or may order that the record of the violation of s. 944.30 be expunged, if all of the following apply:

(a) The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC 7101 to 7112.

(b) The person committed the violation of s. 944.30 as a result of being a victim of trafficking for the purposes of a commercial sex act.

(c) The person submitted a motion that complies with s. 971.30, that contains a statement of facts and, if applicable, the reason the person did not previously raise an affirmative defense under s. 939.46 or allege that the violation was committed as a result of being a victim of trafficking for the purposes of a commercial sex act, and that may include any of the following:

1. Certified records of federal or state court proceedings.

2. Certified records of approval notices, law enforcement certifications, or similar documents generated from federal immigration proceedings.

3. Official documentation from a federal, state, or local government agency.

4. Other relevant and probative evidence of sufficient credibility in support of the motion.

(d) The person made the motion with due diligence subject to reasonable concern for the safety of himself or herself, family members, or other victims of trafficking for the purposes of a commercial sex act or subject to other reasons consistent with the safety of persons.

(e) A copy of the motion has been served on the office of the district attorney that prosecuted the case that resulted in the conviction, adjudication, or finding except that failure to serve a copy does not deprive the court of jurisdiction and is not grounds for dismissal of the motion.

(f) The court in which the motion was made notified the appropriate district attorney's office of the motion and has given the district attorney's office an opportunity to respond to the motion.

(g) The court determines that the person will benefit and society will not be harmed by a disposition.

(3) A special disposition under this section is not a basis for a claim under s. 775.05.

STATEMENT OF THE CASE

This is an appeal by Defendant-Appellant Mustafa Z. Abdel-Hamid from the June 3, 2015, decision and order by the Honorable Michael Guolee of the Milwaukee County Circuit Court denying Abdel-Hamid's post-conviction motion to reconsider expunction. (R20:1-3). Abdel-Hamid correctly acknowledged that expunction is a matter of trial court discretion, but alleged in his post-conviction motion that the sentencing court abused her discretion in denying expunction. (R19:4). Abdel-Hamid also attempted to invoke the courts inherent power to modify a sentence by alleging a new factor. (R.19:7). The court, in denying the post-conviction motion, found that the sentencing court had not abused its discretion and that no new factor existed. (R20:2, 3).

A. Factual Background.

On January 21, 2014, Abdel-Hamid was charged with two counts of Criminal Damage to Property as a Party to a

Crime, contrary to Wisconsin Statutes §§943.01, 939.05 and one count of Battery as a Party to a Crime, contrary to Wisconsin Statutes §§940.19(1), 939.05. (R2:1). The criminal complaint charged three counts occurring over two days, October 13th and 30th. *Id.* The criminal conduct of Abdel-Hamid and his codefendants was more extensive than the charged three counts. (R2:1-5). The criminal conduct of Abdel-Hamid and his codefendants impacted two communities and involved multiple violations during the month of October, 2013. *Id.*

On the evening of October 30, 2013, Abdel-Hamid was arrested, along with his codefendants, after they shot a fifteen year old boy in the chest with a BB gun. (R2:2). The boy's mother was told he had been shot by her daughter and rushed outside to find her son on the ground in pain. *Id.* The South Milwaukee Police Department was notified and began an extensive search of the area for the shooters, following a myriad of complaints regarding property damage. *Id.* Based upon witness descriptions, Abdel-Hamid's vehicle was stopped. *Id.* The vehicle contained four occupants, with Abdel-Hamid being the driver. *Id.* A search of the vehicle recovered a loaded Daisy BB gun rifle. *Id.*

Law enforcement agents from two jurisdictions, Oak Creek and South Milwaukee, interviewed the occupants of the vehicle and discovered that the criminal conduct of that evening was the latest in a series of criminal acts which routinely occurred during the month of October, 2013. (R2:2-5). During an interview by South Milwaukee Police, Hashem Dudin indicated that he and Abdel-Hamid skipped school on October 30, 2013. (R2:2). The two men hung out together, and Dudin smoked marijuana. *Id.* According to Dudin, when he entered Abdel-Hamid's vehicle, he observed the Daisy BB gun rifle. *Id.* After school ended, Abdel-Hamid and Dudin went to school and picked up two juvenile classmates, A.B and J.S. *Id.*

According to Dudin, the men drove around until A.B., a rear seat passenger, told Dudin to roll down the window, at which point A.B. fired the BB gun rifle and shattered the

window of a parked car. *Id.* Dudin also described for law enforcement agents the shooting of a fifteen-year-old boy. Dudin recalled that the fifteen-year-old boy was carrying a large object when a rear seat passenger shot the boy causing him to drop the object and then everyone in the car laughed. *Id.* Dudin reported that between him and A.B., they damaged approximately six car windows and shot the fifteen-year-old boy while Abdel-Hamid drove them around. (R2, 3)

Following his South Milwaukee police interview, Dudin was interviewed by an Oak Creek police officer regarding property damage in that community. *Id.* During this second interview, Dudin admitted that this was not the first time he, Abdel-Hamid and A.B. had driven around and damaged car windows. *Id.* Dudin told law enforcement agents that he had recorded some of the shootings on his cell phone. *Id.* Oak Creek police downloaded seven cellphone videos from Dudin's phone, dated October 13, 2013. *Id.* The first video was four seconds long but documented the sound of a BB gun being fired. (R2:3). The second video was seventy four seconds long and blurry but a voice can be heard saying, "Get him in the back of the head." *Id.* The video continues with someone saying, "Those are the victims, slow down" and "what are they gonna (sic) do about it." *Id.* The third video is the longest and a discussion is recorded where the occupants indicated that they had to be real close in order to shoot people. *Id.* The fourth video is nineteen seconds long and documents the sound of the gun being fired, glass shattering and people laughing. *Id.* The fifth video is short but revealed the extent of the crime spree damage when voices are heard saying, "That is five cars" and "We are up to eleven." *Id.* The sixth video is 73 seconds long and recorded the sounds of the gun firing and a voice saying "Look at the dents." Later in the same video, a voice can be heard saying they want to look for people. *Id.* The seventh and final video documented the sound of rapid gun fire followed by the sound of breaking glass followed by laughing. *Id.*

Oak Creek and South Milwaukee police officers later interviewed A.B., who admitted his involvement with Dudin and Abdel-Hamid in the October 13 and October 30, 2013,

shootings and property damage. (R2:3,4). During the interview A.B. revealed to law enforcement that he, Dudin and Abdel-Hamid had participated in additional property damage a few days after the October 13th date, possibly October 16th where three cars were damaged. *Id.* Abdel-Hamid was again the driver during the October 16, 2013, shootings. *Id.* Finally, A.B. admitted that the men shot at several persons during the October 13, 2013, incident and that Dudin and Abdel-Hamid admitted to him that they had shot car windows before the October 13, 2013, date. *Id.*

Law enforcement agents also interviewed the Defendant-Appellant, Abdel-Hamid who admitted his involvement in the shootings. (R2:3). Abdel-Hamid confirmed much of Dudin's statement and indicated that J.S. played no role in the shootings. *Id.* Abdel-Hamid further admitted that the BB gun found in his vehicle had been used in prior shootings. *Id.* The criminal complaint documented at least fifteen victims from the shootings. (R2:1-5).

B. Procedural History.

On August 13, 2014, Abdel-Hamid and Dudin both plead guilty to two counts of Criminal Damage to Property before the Honorable Bonnie L. Gordon. (R27:). The Battery count was dismissed but read into the record. (R27:7, 8). Both defendants were sentenced together on the same day as the plea. (R. 27, 28). Four separate victims were present for the guilty plea and one addressed the court as to the impact of the offense. (R27:3, 26). The circuit court sentenced both defendants to eight months in the House of Correction, with Huber privileges, as to count one; and 18 months probation, as to count two, with nine months in the House of Correction imposed and stayed. (R10:1-3). The court also ordered \$1,957.21 in restitution for which the defendants were jointly and severally liable. (R.7). Counsel for both defendants requested expunction. (R28:45-46). The circuit court denied expunction for both defendants. *Id.*

In denying the expunction request for Abdel-Hamid, the circuit court reviewed the standard defined in Wis. Stat. § 973.015. (R28:44, 45). The statute reads, in part, that if an individual is under the age of twenty-five, then,

the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition.

The circuit court found that Abdel-Hamid was under twenty-five years old. (R28: 44).

On the question of whether expunction would benefit Abdel-Hamid, the court found that expunction would send a bad or wrong message to Abdel-Hamid. *Id.* The court felt Abdel-Hamid needed to learn a valuable life lesson that actions have consequences. *Id.* The court, during the sentencing, reviewed the significant impact Abdel-Hamid's conduct had on the victims. (R28: 26-32). The court also looked upon the fact that the criminal conduct spanned over several days and impacted so many victims. (R28:26-28). The court addressed Abdel-Hamid directly and stated:

life is a series of choices. Sometimes we make poor choices and sometimes we need to learn that there are consequences for our actions and that they follow us. I believe the number of events, the days that this occurred over, the number of victims, would send a bad message to you. That and you need to understand that there are consequences. That if you, in your own words, do things out of boredom or stupidity-- from your attorney's words—there are consequences to them.

(R28: 45). The court ruled that notwithstanding the fact that Abdel-Hamid had no prior criminal record, he needed to learn the lesson that actions have consequences and therefore Abdel-Hamid would not benefit from expunction. (R28: 46).

The court also addressed the issue of whether society would be harmed by expunction. *Id.* The court found that due to the violent and disruptive nature of the offense society would be harmed if Abdel-Hamid was granted expunction. *Id.*

I believe that these are acts in a way that frighten members of our community, rob them of their sense of security, are disruptive to neighbors, neighborhoods and therefore, it would harm the community for expungement. The request for expungement is denied.

(R28:46).

STANDARD OF REVIEW

A. Exercise of Discretion.

When an appellate court reviews a circuit court's discretionary decision, the appellate court asks whether the circuit court exercised discretion, not whether another judge might have exercised discretion differently. *State v. Prineas*, 2009 WI App 28, ¶ 34, 316 Wis. 2d 414, 766 N.W.2d 206.

The term “discretion” contemplates a process of reasoning which depends on facts in the record or reasonably derived by inference from the record that yield a conclusion based on logic and founded on proper legal standards. The record on appeal must reflect the circuit court's reasoned application of the appropriate legal standard to the relevant facts of the case.

State v. Delgado, 223 Wis. 2d 270, 280-81, 588 N.W.2d 1 (1999) (citations omitted).

Under this standard, the circuit court's determination will be upheld on appeal if it is a reasonable conclusion, based upon a consideration of the appropriate law and facts of record. . . . While the basis for an exercise of discretion should be set forth in the record, it will be upheld if the appellate court can find facts of record which would support the circuit court's decision.

Peplinski v. Fobe's Roofing, Inc., 193 Wis. 2d 6, 20, 531 N.W.2d 597 (1995) (citations omitted).

B. Sentencing Discretion.

Sentencing lies within the circuit court's discretion. *See, e.g., State v. Gallion*, 2004 WI 42, ¶ 17, 270 Wis. 2d 535, 678 N.W.2d 197 (“It is a well-settled principle of law that a circuit court exercises discretion at sentencing.”); *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971) (“[S]entencing is a discretionary judicial act.”). Sentencing discretion extends to the circuit court's decision whether to order, when permitted under Wis. Stat. § 973.015, expungement of a conviction. *State v. Matasek*, 2014 WI 27, ¶ 2, 353 Wis. 2d 601, 846 N.W.2d 811 (“Wisconsin Stat. § 973.015 grants circuit courts discretion to order a record expunged.”).

A sentencing court properly exercises its discretion when the court engages in a reasoning process that “depend[s] on facts that are of record or that are reasonably derived by inference from the record” and imposes a sentence “based on a logical rationale founded upon proper legal standards.” *McCleary*, 49 Wis. 2d at 277. *See also State v. Taylor*, 2006 WI 22, ¶17, 289 Wis. 2d 34, 710 N.W.2d 466 (sentencing court may properly draw inferences from the facts presented at sentencing and from the entire record).

The purposes underlying a sentence “include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Gallion*, 270 Wis. 2d 535, ¶ 40. *See also, Id.* n.9. When deciding on a sentence, a sentencing court must consider three principal factors: the gravity of the offense, the character of the defendant, and the need to protect the public. *See* Wis. Stat. § 973.017(2)(ad), (ag), and (ak);³ *McCleary*, 49 Wis. 2d at 276;

³ “[T]he legislature has mandated that when a court makes a sentencing decision that the court shall consider the protection of the public, the gravity of the offense, the rehabilitative needs of the defendant, and any applicable mitigating or aggravating factors, including the aggravating factors specified in subs. (3) to (8). Wis. Stat. §§ 973.01(2)(ad), (ag), (ak),

State v. Thompson, 172 Wis. 2d 257, 264, 493 N.W.2d 729 (Ct. App. 1992). The court must also consider mitigating and aggravating factors. Wis. Stat. § 973.017(2)(b). A sentencing court may also consider the defendant's criminal record, history of undesirable behavior patterns, personality, character, social traits, remorse, cooperativeness, and degree of culpability; the results of the PSI; the aggravated nature of the crime; the need for close rehabilitative control; and the rights of the public. *Gallion*, 270 Wis. 2d 535, ¶ 43 n.11; *State v. Harris*, 119 Wis. 2d 612, 623-24, 350 N.W.2d 633 (1984); *State v. Lewandowski*, 122 Wis. 2d 759, 763, 364 N.W.2d 550 (Ct. App. 1985). The weight assigned to each factor lies within the circuit court's discretion. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975); *State v. Stenzel*, 2004 WI App 181, ¶ 16, 276 Wis. 2d 224, 688 N.W.2d 20.

When reviewing a sentencing decision, an appellate court presumes that the circuit court acted reasonably. An appellate court "will not interfere with the circuit court's sentencing decision unless the circuit court erroneously exercised its discretion." *State v. Lechner*, 217 Wis. 2d 392, 418-19, 576 N.W.2d 912 (1998). On appeal, a reviewing court will search the record for reasons to sustain a circuit court's exercise of sentencing discretion. *McCleary*, 49 Wis. 2d at 282.

[T]he exercise of discretion does not lend itself to mathematical precision. The exercise of discretion, by its very nature, is not amenable to such a task. As a result, we do not expect circuit courts to explain, for instance, the difference between sentences of 15 and 17 years. We do expect, however, an explanation for the general range of the sentence imposed. This explanation is not intended to be a semantic trap for circuit courts. It is also not intended to be a call for more "magic words." Rather, the requirement of an on-the-record explanation will serve to fulfill the *McCleary* mandate that discretion of a sentencing judge be exercised on a "rational and explainable basis." 49 Wis. 2d at 276.

and (b)." *State v. Gallion*, 2004 WI 42, ¶ 40 n.10, 270 Wis.2d 535, 678 N.W.2d 197.

Gallion, 270 Wis. 2d 535, ¶ 49.

C. Motion to Modify Sentence Based Upon New Factor.

The power to modify a sentence is one of the judiciary's inherent powers. This power is exercised to prevent the continuation of unjust sentences.

However, a circuit court's inherent authority to modify a sentence is a discretionary power that is exercised within defined parameters. For example, . . . a court has the inherent authority to modify a sentence if a new factor is presented However, there must be some finality to the imposition of a sentence. Therefore, we have held that it would be an erroneous exercise of discretion to modify a sentence simply because upon reflection the court may have chosen a different one. Similarly, a court cannot set a harsh sentence to "shock" the defendant, while intending to reduce the sentence after the defendant has fully realized the loss of liberty he faces.

In order to obtain sentence modification based on a new factor, an inmate must show that: (1) a new factor exists; and (2) the new factor warrants modification of his or her sentence. A new factor is not just any change in circumstances subsequent to sentencing. Rather, it is:

a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.

A defendant must prove a new factor by clear and convincing evidence.

State v. Crochiere, 2004 WI 78, ¶¶ 11-14, 273 Wis. 2d 57, 681 N.W.2d 524 (footnote omitted) (citations omitted) (withdrawn language omitted), *abrogated on other grounds by State v. Harbor*, 2011 WI 28, ¶¶ 46 n.11, 52, 333 Wis. 2d 53, 797 N.W.2d 828 (withdrawing language).

[A] decision on whether to modify a sentence is within the circuit court's discretion. In order to succeed on a claim for

sentence modification based on a new factor, an inmate must prevail in both steps of new factor analysis by proving the existence of a new factor and that it is one which should cause the circuit court to modify the original sentence.

Id. ¶ 24 (citations omitted). *See also State v. Trujillo*, 2005 WI 45, ¶¶ 10-11, 279 Wis. 2d 712, 694 N.W.2d 933; *State v. Michels*, 150 Wis. 2d 94, 97, 441 N.W.2d 278 (Ct. App. 1989), *abrogated on other grounds by Harbor*, 333 Wis. 2d 53, ¶ 52.

“Whether a new factor exists is a question of law, which [an appellate court] review[s] *de novo*.” *Trujillo*, 279 Wis. 2d 712, ¶ 11.

The existence of a new factor does not, however, automatically entitle the defendant to relief. Whether the new factor warrants a modification of sentence rests within the trial court’s discretion.

State v. Hegwood, 113 Wis. 2d 544, 546, 335 N.W.2d 399 (1983). *See also State v. Hauk*, 2002 WI App 226, ¶ 43, 257 Wis. 2d 579, 652 N.W.2d 393; *Michels*, 150 Wis. 2d at 97.

In determining whether to exercise its discretion to modify a sentence on the basis of a new factor, the circuit court may, but is not required to, consider whether the new factor frustrates the purpose of the original sentence.

State v. Ninham, 2011 WI 33, ¶ 89, 333 Wis. 2d 335, 797 N.W.2d 451.

ARGUMENT

I. The Circuit Court Properly Exercised Its Discretion When The Court Rejected Abdel-Hamid’s Post-Conviction Motion For Expunction Based Upon A New Factor.

Abdel-Hamid alleged in his post-conviction motion that he should be resentenced based upon a new sentencing factor.

(R19:7). The alleged new factor was that the Abdel-Hamid's application for a certification with the national registry of EMT's had been placed on hold until his sentence was complete. (R19:7,8). It was alleged that neither the attorneys or the court knew at the time of sentencing that Abdel-Hamid would have these immediate consequences from the denial of expungement. *Id.*

In denying Abdel-Hamid's post-conviction motion, the circuit court found no new factor present. (R20:2). The circuit court correctly noted that the sentencing court was well aware that Abdel-Hamid had future education and career goals. *Id.* Defense counsel told the court that Abdel-Hamid planned to attend college and apply for the pharmacy program. *Id.* Abdel-Hamid also presented the court with facts regarding Abdel-Hamid's school record and employment history. *Id.* The sentencing court was aware of all these factors, but expressed to Abdel-Hamid that in an "ordered society there are consequences for our action and that these decisions we make can follow us throughout our lives." (R20:2, 27:45, 46). In denying Abdel-Hamid's post-conviction motion, the circuit court found that the delayed action on Abdel-Hamid's application for certification with the national registry of EMT's, was just one example of the kinds of negative consequences the sentencing court alluded to at the time of sentencing. (R20:2,3).

II. The Circuit Court Properly Exercised Its Discretion When The Court Rejected Abdel-Hamid's Request For Expunction.

The primary issue on appeal is whether the circuit court—both at sentencing and on Abdel-Hamid's post-conviction motion—erroneously exercised its discretion in denying Abdel-Hamid's request for expunction. Abdel-Hamid argues that the circuit court failed to make its decision denying the request for expunction based upon the facts of the case. (Def. Br. 7). The record belies these contentions, and instead shows that the circuit court engaged in the appropriate inquiries at sentencing to support its sentencing decision, including the

denial of Abdel-Hamid's request for expunction. (R28:25-46). The State therefore asks this court to affirm the sentencing court's exercise of discretion in denying expunction.

The word "may" in Wis. Stat. § 973.015 grants the circuit court discretion to determine whether to grant expunction upon successful completion of the sentence. *See State v. Matasek*, 348 Wis. 2d 243, (Ct.App.2013). There is a strong public policy against interference with the sentencing discretion of the circuit court, and sentences are afforded the presumption that the circuit court acted reasonably. 270 Wis. 2d 535, (2004); *McCleary v. State*, 49 Wis. 2d 263, 281, (1971).

To be eligible for expunction an offender must be under 25 at the time the offense was committed. Wis. Stat. § 973.015(1)(a). The offense is eligible for expunction if it is a misdemeanor as it was in the present case. At sentencing, the circuit court may order the record be expunged upon successful completion of the sentence if the court determined the person will benefit and society will not be harmed by expunction. Wis. Stat. § 973.015(1)(a). By including the word "may" the legislature granted the circuit court discretion to refuse to order expunction even if the criteria of Wis. Stat. § 973.015 are satisfied.

In the present case, the circuit court properly exercised its sentencing discretion in concluding that Abdel-Hamid would not be eligible for expunction after his probation. The court during sentencing went through the facts of this case in great detail. The court considered the large number of victims, and the impact that this crime of violence had on their lives. (R28:26-32). The sentencing court also reminded Abdel-Hamid that this was not a one-time incident but an ongoing pattern of criminal activity that spanned several weeks. *Id.* The sentencing court found it an aggravating factor that Abdel-Hamid had plenty of opportunities to stop or think about the consequences of his crime but never stopped. (R28:27). The sentencing court in denying expunction considered the Wis. Stat. § 973.015 factors and determined that Abdel-Hamid did not meet either factor. (R28:44-46).

A. Benefit to Abdel-Hamid.

The circuit court at sentencing found that Abdel-Hamid would not benefit from expunction. *Id.* On appeal Abdel-Hamid disagreed with the court's assessment and pointed to the obvious benefits expunction provided, a reduction in Abdel-Hamid's criminal history. (Def. Br. 7-9). Under Abdel-Hamid's theory, almost every youthful offender would automatically qualify for expunction because they would benefit from having their criminal record reduced.

In exercising its sentencing discretion, the circuit court looked beyond the superficial benefit provided by expunction of a clean record. In determining that expunction would not benefit Abdel-Hamid, the sentencing court looked at the number of criminal acts Abdel-Hamid participated in, the sixteen victims, and the fact that the crimes occurred over several days, in finding that expunction would not benefit Abdel-Hamid. (R28:26-36,45-46). Looking toward the future, the sentencing court found that to grant expunction would not benefit Abdel-Hamid because it would not teach him anything and deprive him of the opportunity to learn that actions have consequences. (R20:1, 2; R28:44-46). The sentencing court found that expunction would send a bad or wrong message to Abdel-Hamid. *Id.* The court felt Abdel-Hamid needed to learn the valuable life lesson that actions have consequences. *Id.* The court addressed Abdel-Hamid directly at sentencing and stated:

life is a series of choices. Sometimes we make poor choices and sometimes we need to learn that there are consequences for our actions and that they follow us. I believe the number of events, the days that this occurred over, the number of victims, would send a bad message to you. That and you need to understand that there are consequences. That if you, in your own words, do things out of boredom or stupidity-- from your attorney's words—there are consequences to them.

(R.28: 45).

B. Harm to Society.

Abdel-Hamid in his brief incorrectly interprets the standard for harm to society. Abdel-Hamid mistakenly asserts that this factor calls for the court to make a determination as to whether a particular defendant, based upon specific facts known to the court, “will pose harm to society by reoffending in the future.” (Def. Br. 11).

Both at the original sentencing and in the order denying post-conviction expunction, the court correctly addressed the proper standard. (R20:1; R28:45-46). Harm to society does not come from a fear that the Defendant-Appellant will reoffend but from the fact that “the community has an interest in having these convictions remain on his record.” (R20:1, 2). A minimum of sixteen different community members were harmed by Abdel-Hamid’s violent and disruptive actions. (R.28:6-8). The community has a vested interest in holding criminals accountable for their conduct and deterring future violent acts by punishing violators.

In denying Abdel-Hamid’s request for expungement the court found that society would be harmed by expunction. According to the court, Abdel-Hamid’s actions were extremely disruptive to members of the community, his conduct “greatly diminishes or destroys the sense of security that each person has the right to expect.” (R28: 6-27, 45). The sentencing court found that Abdel-Hamid’s conduct frightened members of the community, robbed them of their sense of security and were disruptive to neighbors, and neighborhoods. (R28:46). Based upon the disruptive and violent nature of the offense the court determined that expunction would harm the community. *Id.*

The circuit court properly exercised its discretion in making the expunction decision. It weighed the factors and discussed each on the record. It found that Abdel-Hamid would not benefit and society would be harmed if it made the decision to allow expunction of Abdel-Hamid’s conviction. The court’s finding was not clearly erroneous.

CONCLUSION

Based on the legal principles discussed and the facts of record, the State respectfully asks this court to affirm the judgment of conviction and the order denying post-conviction relief.

Dated this _____ day of October, 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 word count of this brief is 5,232.

Date

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CERTIFICATE OF COMPLIANCE WITH 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 s. 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.

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