STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 2019AP17-CR & 2019AP18-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PARIS MARKESE CHAMBERS,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE T. CHRISTOPHER DEE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Is Paris Markese Chambers's sentence unduly harsh and unconscionable?

The circuit court said no.

This Court should say no.

STATEMENT ON ORAL ARGUMENT AND PUBLICTION

Neither is warranted. The parties' briefs should adequately set forth the facts, and this Court can resolve Chambers's claim that his sentence was unduly harsh and unconscionable by applying well-established law.

INTRODUCTION.

When Chambers was 17 years old, he and a friend went on a multiday crime spree. As the postconviction court summarized, "[t]hey busied themselves with breaking into vehicles, stealing them, and stealing things with them, and they also engaged themselves in shooting BB guns at numerous vehicles and houses, breaking windows as they went along." (R. 51:2.)

The State charged Chambers with six felonies and two misdemeanors over two cases. Under a plea agreement, Chambers pleaded guilty to those charges; in exchange, the State agreed to not charge Chambers with any of the "60 plus" additional counts that the State could have levied based on Chambers's crimes.

The circuit court sentenced Chambers to an aggregate sentence of just over nine years of confinement and 13.5 years of extended supervision for the crimes. Chambers claims that the sentence is unduly harsh and unconscionable.

This Court should affirm. The circuit court soundly exercised its discretion in sentencing Chambers, and his sentences are not unduly harsh or unconscionable.

STATEMENT OF THE CASE

In Milwaukee County case number 16CF286, the State filed a criminal complaint charging Chambers with two counts of felony theft (value $2,500 to $5,000) as a party to a crime. (R. 1:1.)[1] Police had arrested Chambers after he and his friend, Earl Blackmon, broke into two cars using a screwdriver, drove those cars, and crashed them into other cars. (R. 1:1–2.)

Chambers was released on bond after his initial appearance on January 25, 2016. (R. 54:6–7.) Beginning the next day and continuing over the following week, Chambers and Blackmon continued to steal cars and damage property around Milwaukee. (R. [17]1.) Their crimes included:

- Attempting to steal a Dodge Durango in an apartment complex parking lot;
- Breaking into and shooting a BB gun at numerous vehicles in the parking structure at General Mitchell Airport, damaging 40 vehicles;
- Stealing a car from the airport parking lot; and
- Driving around and shooting a BB gun at cars and homes.

(R. [17]1:4–6.) During these shootings, one woman was in her living room when a BB broke her window and she felt something hit the left side of her face. (R. [17]1:6.) Police later attributed damage to 17 other vehicles at the airport and

[1] Since the two records in these cases overlap, the State generally cites the appellate record in 2019AP18. When necessary to cite to the appellate record in 2019AP17, the State will use the prefix [17] in the citation.

seven cars at a hospital to Chambers and Blackmon. (R. [17]1:7.)

As a result of these crimes, the State charged Chambers in a second case (Milwaukee County case no. 16CF613), with attempting to steal a vehicle, stealing a vehicle, two misdemeanor counts of criminal damage to property—all as a party to a crime—and two counts of felony bail jumping. (R. [17]1:1–3.)

Chambers entered guilty pleas to all of the charges. (R. 60:26–28.) The State agreed to read in the uncharged conduct alleged in the complaint in 16CF613—which would have amounted to over 60 additional criminal charges—and to recommend a prison sentence with the length left up to the court. (R. 60:2.)

The court sentenced Chambers to consecutive sentences aggregating to 8.5 years' initial confinement, 300 days' jail time, and 13.5 years' extended supervision. (R. 21:1; [17]60:1, 66:1.) Chambers sought postconviction sentence modification or resentencing, arguing a new factor and that the sentence was unduly harsh and unconscionable. (R. 47.) The circuit court denied the motion in a written decision and order. (R. 51.)

Chambers appeals, renewing only his claim that his sentence was unduly harsh and unconscionable. Additional facts will be addressed in the argument section below.

STANDARD OF REVIEW

As discussed below, this Court reviews the circuit court's sentencing decisions for an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶ 17, 270 Wis. 2d 535, 678 N.W.2d 197.

ARGUMENT

Chambers's sentence was not unduly harsh or unconscionable.

Chambers's claim concerns both the circuit court's initial exercise of sentencing discretion and its subsequent discretionary decision that his sentence was not unduly harsh or unconscionable. The relevant legal principles governing each of those discretionary decisions follow.

A. Circuit courts have considerable discretion in fashioning sentences.

Circuit courts retain considerable discretion at sentencing. *Gallion*, 270 Wis. 2d 535, ¶ 17. If the circuit court demonstrated a process of reasoning and came to a reasonable conclusion based on legally relevant facts and factors, this Court will not interfere with the sentencing decision. *State v. Cummings*, 2014 WI 88, ¶ 75, 357 Wis. 2d 1, 850 N.W.2d 915 (citation omitted). Accordingly, this Court will reverse a circuit court's exercise of sentencing decision only if the circuit court erroneously exercised its discretion. *Gallion*, 270 Wis. 2d 535, ¶ 17.

When fashioning a sentence, a sentencing court must consider the gravity of the offense, the need to protect the public, the defendant's rehabilitative needs, and any applicable aggravating or mitigating factors. Wis. Stat. § 973.017(2). The sentence should reflect the minimum amount of confinement necessary that is consistent with these factors. *Gallion*, 270 Wis. 2d 535, ¶ 44. The court may also consider the following: (1) the defendant's criminal history; (2) any history of undesirable behavior patterns; (3) the defendant's personality and character; (4) the presentence investigation results; (5) the vicious or aggravated nature of the crime; (6) the defendant's degree of culpability; (7) the defendant's demeanor at trial; (8) the defendant's age,

education and employment history; (9) the defendant's remorse, repentance and cooperativeness; (10) the need for rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention. *Harris v. State*, 75 Wis. 2d 513, 519–20, 250 N.W.2d 7 (1977). The circuit court retains considerable discretion in determining which factors are relevant and most important to its sentencing decision. *Gallion*, 270 Wis. 2d 535, ¶ 68; *State v. Grady*, 2007 WI 81, ¶ 31, 302 Wis. 2d 80, 734 N.W.2d 364.

B. Circuit courts have limited authority to modify sentences.

A court may modify a sentence if it determines that the sentence was unduly harsh or unconscionable. *Cummings*, 357 Wis. 2d 1, ¶ 71 (citing *State v. Harbor*, 2011 WI 28, ¶ 35, 333 Wis. 2d 53, 797 N.W.2d 828). "A circuit court may not . . . modify a sentence merely 'on reflection and second thoughts alone.'" *Id.* ¶ 70 (quoting *Harbor*, 333 Wis. 2d 53, ¶ 35).

"A sentence is unduly harsh or unconscionable 'only where the sentence 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.'" *Cummings*, 357 Wis. 2d 1, ¶ 72 (quoting *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975)). A sentence well within the limits of the maximum sentence is presumptively not unduly harsh or unconscionable. *State v. Grindemann*, 2002 WI App 106, ¶ 32, 255 Wis. 2d 632, 648 N.W.2d 507.

This Court reviews a postconviction court's determination "that a sentence imposed was not unduly harsh

or unconscionable for an erroneous exercise of discretion." *Id.* ¶ 30.[2]

C. Chambers failed to demonstrate that his sentence was unduly harsh or unconscionable.

1. Chambers's sentence was well within the statutory maximums; hence, it is presumptively not unduly harsh or unconscionable.

Chambers was convicted of the following six felony and two misdemeanor crimes:

- Take and drive a vehicle without consent, as a party to a crime, a Class H felony;
- Attempt to take and drive a vehicle without consent, as a party to a crime, a Class H felony[3];
- Two counts of theft ($2,500 to $5,000) as a party to a crime, a Class I felony;

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[2] Chambers proposes that this Court should review whether his sentence was unduly harsh and unconscionable "as a question of law." (Chambers's Br. 14–15.) He claims that "unduly harsh and unconscionable" is a legal standard that is better viewed through a de novo lens. (*Id.*) To start, this Court's deference to the circuit court's sentencing decisions, as well as the erroneous-exercise standard for unduly-harsh-sentence claims, are well-established in the law, which this Court cannot overrule or modify. *See Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). In any event, the unduly-harsh standard is tied to the circuit court's inherent authority to revise a sentence. *Grindemann*, 255 Wis. 2d 632, ¶ 21. It is not an objective legal standard or tied to a constitutional right, which are the features that would normally prompt de novo review.

[3] The maximum term of imprisonment for an attempt is one-half of the maximum term of imprisonment for a Class H felony under Wis. Stat. § 939.32(1g)(b)1.

- Two counts of bail jumping, a Class H felony; and
- Two counts of criminal damage to property, a Class A misdemeanor.

In total, Chambers's convictions exposed him to up to 13.5 years' initial confinement, 14.5 years' extended supervision, 18 months' jail time, and $55,000 in fines. With a confinement sentence of 8.5 years, he was sentenced to roughly two-thirds that maximum initial confinement time, and with a jail sentence of 300 days, he received just over half the maximum on the misdemeanors, and no fines. His confinement time on both the misdemeanors and felonies is "well within" the statutory maximum and is presumptively not unduly harsh or unconscionable.[4] *Grindemann*, 255 Wis. 2d 632, ¶ 32.

2. There is no basis in the record to conclude that the sentences were "nonetheless, unduly harsh or unconscionable."

Here, the court at sentencing addressed all of the relevant sentencing factors, including seriousness of the crimes, the read-in conduct, character, protection of the public, and deterrence.

Seriousness of the crimes. The court noted the victim who was hit with broken glass from the BB hitting her window, and told Chambers, "[P]eople were hurt and people were put at tremendous exposure of getting hurt from these

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[4] While Chambers requests a shorter period of extended supervision, Chambers argues that the confinement period—not the period of extended supervision—is unduly harsh. (*See* Chambers's Br. 16 (claiming that confinement portion is unduly harsh); *id.* at 17 (same); *id.* at 23 ("The lengthy prison sentence imposed in this case is particularly harsh given Mr. Chambers's traumatic childhood."); *id.* at 24–25 (same).

accidents . . . You were at great risk of getting hurt." (R. 61:53.)

The court also appropriately considered the read-in uncharged conduct in determining the seriousness of the crime. *See State v. Floyd*, 2000 WI 14, ¶ 25, 232 Wis. 2d 767, 606 N.W.2d 155. The court emphasized the widespread nature of the crimes and that Chambers "repeatedly, repeatedly" stole and damaged cars and other property. It noted that Chambers was charged with eight counts but there the DA's office had referrals for over 60 possible charges that would have exposed him to "over 100 years of possible exposure in confinement. That's not even counting extended supervision." (R. 61:52.)

In the court's view, it was the sheer multitude of crimes in which Chambers participated that drove up the seriousness factor: "There are just too many incidents . . . way too much. One or two things, I could kind of get that, but you have so much responsibility here for so much damage to so many people, that would unduly depreciate the seriousness of all this." (R. 61:54.) The court explained that while it agreed generally that prison should "be reserved for more violent offenders, but you've just done too much here, it can't be avoided. . . . [I]n 25 years I just don't think I've ever seen the breadth or depth or extent of property damage, criminality by one person." (R. 61:54–55.)

Character. The court highlighted that here, Chambers was arrested and released after the first set of incidents on January 22, and while released, Chambers went and "pick[ed] up a raft of other charges. I guess you didn't think it was that serious. You didn't quite understand what was going on." (R. 61:49.) The court described Chambers's "persistence" in recommitting so quickly after having been arrested on the original two offenses "especially disturbing." (R. 61:51.)

The court also considered Chambers's history, explaining that Chambers was not at fault for his traumatic childhood:

> Well, you certainly didn't have a great childhood, and that's unfortunate. That's not your fault. You didn't ask for that. It is unfortunate that your father took off. It's unfortunate that your mother passed away. You bounced around the foster care system, and that's not a party for any child. I worked out in that system for many years. That's rough on kids, no doubt about it. You were adopted which initially seemed to be a good thing, but something broke down there. I don't know exactly when. And again, not something you asked for, and I get that.

(R. 61:50.)

The court also factored Chambers's mental health issues, "ADHD and depression," which could explain his actions to the extent that they were impulsive. (R. 61:50–51.) That said, the court continued, Chambers had planned out the crimes by going to so many locations, arming himself with BB guns, and carrying burglary tools. (R. 61:51.)

The court weighed as a mitigating factor Chambers's lack of a prior criminal record (R. 61:53), though the court believed that the DA's office took that into account when it declined to issue more charges (R. 61:53). It also considered that while Chambers did not act violently toward any of the victims personally or intend to hurt anybody, he put others, including himself, in harm's way by his actions. (R. 61:53.)

Protection of the public. The court noted that there were a few aspects to protection of the public that were in play. First, the public had interest in being able to park their cars in public places without property damage and without the expense of having to repair the damage and the hassle and disabling effects of losing access to a car. (R. 61:45–46.) In addition, the crimes disabled the victims psychologically by causing "loss of trust, anxiety, not being able to park in a

garage anymore, not visiting certain other places anymore, people losing sense of security around their own homes, their own place of work." (R. 61:46.) Finally, looking at the protection of the public from "a more community-wide view," Chambers's crimes and the sheer number of incidents he participated in caused economic and reputational damage to the city and county. (R. 61:47–48.)

Deterrence. The court explained that Chambers's committing the second batch of crimes almost immediately after his arrest and release for the first set of crimes required it to send a message "that we just can't have widespread and wanton destruction like this. It is absolutely unacceptable. And it has to be a strong message." (R. 61:49.)

Given the court's sentencing remarks, its collective, consecutive sentences totaling just over nine years of prison and jail time and 13.5 months' extended supervision did not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Grindemann*, 255 Wis. 2d 632, ¶ 31.

Postconviction review. Further, the postconviction court, which was the same court that originally sentenced Chambers, soundly denied Chambers's motion for resentencing. (R. 51:6.) The court focused on Chambers's claim that his later-diagnosed PTSD was a new factor entitling him to sentence modification, but made clear that "a message has to be sent that this type of activity will not be tolerated under any circumstances."

> These may have been "lower level property crimes," as the defendant suggests, but there were A LOT of them, an outrageous amount of them, a completely unacceptable amount, and the harm could have been far worse in terms of injury to innocent people by the shooting spree on which he embarked.

(R. 51:6.) The court further declined to make Chambers, as he requested, eligible for early release programs "because it

intends the defendant to serve the full sentences without the benefit of such programs," regardless whether Chambers was a good candidate for the programs. (R. 51:6.)

Taken together and given the breadth of the crimes Chambers committed, the court's sentence of just over nine years' confinement time and less than 14 years' extended supervision does not offend the judgment of a reasonable person. The court soundly exercised its discretion.

D. Chambers identifies no improper exercise of discretion by the court.

Chambers's argument to the contrary reads like a re-argument of all the reasons his trial counsel already advanced to the court to urge a shorter sentence. But, as discussed above, the court considered and weighed, as it had discretion to do, that Chambers committed primarily property crimes and did not mean to hurt anyone (Chamber's Br. 16–17) and that Chambers had a traumatic upbringing and had unmet mental health needs (Chambers's Br. 22–24).

Chambers claims that the court did not assign adequate mitigating weight to the fact that he was 17 years old and not fully brain-developed at the time of his crimes. (Chambers's Br. 17–22.) But Chambers's counsel informed the court of Chambers's young age and urged it to treat him more like a juvenile than an adult. (R. 61:22–23.) The court was entitled to weigh that fact as it chose. It was also entitled to weigh the fact that Chambers avoided significantly more exposure due to the State's decision to not charge him for the 60-plus crimes that were referred. Given that the court soundly determined that Chambers's choice to continue his spree of property damage and risky conduct immediately after having been arrested outweighed his youth and his lack of prior record. Contrary to Chambers's claim that "[h]e therefore has never really [had] a 'second chance'" (Chambers's Br. 22), the court's sentence reflects its reasonable view that Chambers had

multiple "second chances" each time he chose to commit a new criminal act—particularly after his first arrest—and wholly earned the sentence it imposed.

Chambers claims that he should be made eligible for SAP and CIP early release programming. (Chambers's Br. 26–27.) But the court soundly deemed Chambers ineligible.

A court decides "as part of the exercise of its sentencing discretion," a defendant's eligibility to participate in CIP or SAP. Wis. Stat. § 973.01(3g)–(3m). "[W]hile the trial court must state whether the defendant is eligible or ineligible for the program[s]," the court is not required to make "completely separate findings on the reason for the eligibility decision, so long as the overall sentencing rationale also justifies the" program-eligibility determination. *State v. Owens*, 2006 WI App 75, ¶ 9, 291 Wis. 2d 229, 713 N.W.2d 187.

Here, the circuit court gave sound reasons for declining to extend eligibility to Chambers: (1) it intended for Chambers to serve the full period of incarceration for his sentences, regardless whether he was a good candidate for it (R. 51:6), and (2) Chambers committed so many crimes that eligibility for early release would unduly depreciate the seriousness of Chambers's crime spree (R. 61:54). Those reasons were consistent with its overall sentencing rationale that a strong punishment component was warranted given the quantity of crimes Chambers involved himself in, especially after he was arrested and released, and the fact that he was not charged for the great majority of those crimes.

In sum, Chambers identifies nothing that the circuit court did—either at sentencing or in its postconviction decision—that represented an improper exercise of discretion. He is not entitled to relief.

CONCLUSION

This Court should affirm the judgment of conviction and the decision and order denying postconviction relief.

Dated this 14th day of May 2019.

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 3,269 words.

_____
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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. § 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 14th day of May, 2019.

_____
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