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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 2019AP000017-CR & 2019AP000018-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, Both Entered in the Milwaukee County Circuit Court, the Honorable T. Christopher Dee Presiding

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REPLY BRIEF OF DEFENDANT-APPELLANT

LEON W. TODD
Assistant State Public Defender
State Bar No. 1050407

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202
(414) 227-4805
toddl@opd.wi.gov

Attorney for Defendant-Appellant

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ARGUMENT

I. This court should modify Mr. Chambers' sentences or order resentencing because his global prison sentence is unduly harsh and unconscionable.

The State offers three arguments for why it believes Mr. Chambers' global sentence is not unduly harsh and unconscionable—first, the circuit court considered the three primary sentencing factors in pronouncing sentence (State's Resp. Br. at 7-11); second, Mr. Chambers identifies nothing else the circuit court did that was an improper exercise of discretion (*id.* at 11-12); and third, Mr. Chambers' sentence is well within the statutory maximums (*id.* at 6-7). All three of these arguments fail.

First, the fact that the circuit court considered the three primary sentencing factors is neither here nor there. Mr. Chambers does not claim that the circuit court violated the principles of *McClearly v. State*, 49 Wis. 2d 263, 182 N.W.2d 512, or *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, by failing to consider the necessary sentencing factors or failing to adequately explain its sentences. His claim is that, irrespective of the court's explanation or reasoning, the global sentence it imposed was unduly harsh and unconscionable.

Second, the State appears to argue that because the sentencing court already heard and

considered the factual points underlying Mr. Chambers' harsh and excessive claim, he has failed to identify any improper exercise of discretion by the circuit court. (State's Resp. Br. at 11-12). That is also incorrect.

Even if Mr. Chambers cannot point to any new factors or other instances where the circuit court erroneously exercised its discretion—for example, by relying on inaccurate information or improper factors—that does not establish that his sentence is not unduly harsh and unconscionable. A claim that a sentence is legally harsh and unconscionable is separate and distinct from a new factor claim[1] or a claim of reliance on inaccurate information or an improper sentencing factor. The question for a harsh and excessive claim is whether 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." *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citing *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975)). If a circuit court imposes a sentence that meets that

[1] It is also worth noting that in evaluating a harsh and excessive claim, a reviewing court cannot even consider new information that was not before the original sentencing court. See *State v. Klubertanz*, 2006 WI App 71, ¶41, 291 Wis. 2d 751, 713 N.W.2d 116 (stating that a court's authority to review a sentence to determine whether it is unduly harsh "does not include the authority to reduce a sentence based on events that occurred after sentencing").¶

definition, that in itself constitutes an erroneous exercise of discretion. *See Ocanas*, 70 Wis. 2d at 185.

Third, the State misunderstands the cases that have stated that "[a] sentence well within the limits of the maximum sentence is not" unduly harsh and unconscionable. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983); *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449; *Grindemann*, 255 Wis. 2d 632, ¶¶31-32. In those cases, the defendants committed serious felonies involving sexual assaults, and their sentences represented only a small fraction of their total exposure. *See Daniels*, 117 Wis. 2d at 22 (five years out of twenty for sexual intercourse with a ten-year-old, imposed prior to truth-in-sentencing when defendants were eligible for parole after serving 25% of their sentence and had to be paroled after serving two-thirds of it); *Scaccio*, 230 Wis. 2d 95, ¶18 (five years out of twenty for second-degree sexual assault of a child, imposed after revocation of probation and prior to truth-in-sentencing); *Grindemann*, 255 Wis. 2d 532, ¶¶3, 9, 32 (forty-four years out of 110 for eleven counts of second-degree sexual assault, imposed prior to truth-in-sentencing).

Here, Mr. Chambers' total exposure was 29½ years of imprisonment. He received twenty-two years of imprisonment. That is 75% of the total maximum. His total exposure in terms of confinement time was 13½ years of initial confinement plus 1½ years jail time. That is a total of 180 months. Mr. Chambers received 8½ years of initial confinement plus 300

days of jail time, a total of 112 months. That amounts to nearly two-thirds of the total maximum confinement time Mr. Chambers faced. Mr. Chambers' total sentence—both in terms of confinement time and overall time—was much closer to the total maximum than the sentences in *Grindemann*, *Scaccio*, or *Daniels*. Mr. Chambers submits that this total sentence is thus not "well within" the legal maximum as that terminology was used in those cases.

In any event, even if this court determines that Mr. Chambers' total sentence is well within the legal maximum, that is only the starting point of the analysis. In *Grindemann*, this court concluded that because the defendant's sentence was well within the limits of the legal maximum, it was merely "presumptively" not unduly harsh or unconscionable. *Grindemann*, 255 Wis. 2d 532, ¶32. The *Grindemann* court therefore viewed the record before it to determine whether the sentence was *nonetheless* unduly harsh or unconscionable. *Id.*; *see also Scaccio*, 204 Wis. 2d 95, ¶18 ("A sentence well within the limits of the maximum sentence is *unlikely* to be unduly hard or unconscionable.") (emphasis added).

Here, the sentencing record establishes that Mr. Chambers' global sentence—even if it is well within the legal maximum—is nonetheless unduly harsh and unconscionable. Significantly, this is not a case where Mr. Chambers received a single sentence that is well within the legal maximum for that offense. Mr. Chambers received a large number of

consecutive sentences in these cases. The "well within the maximum" paradigm is not well suited for a harsh and excessive claim involving a large number of sentences that all run consecutively to each other.

When a circuit court imposes a large number of consecutive sentences in a single case, there is an increased risk that the sum total may be disproportionate to the defendant's entire course of conduct. This is especially true where, as here, the crimes took place over a relatively short period of time and are of a similar type. In that type of situation, if a reviewing court simply asks whether each individual sentence or the total sentence is well within the legal maximum, it can miss the forest for the trees.

For instance, a defendant can commit a spree of numerous property crimes that exposes him to an exceedingly massive amount of time. In this case, for example, the circuit court noted that if all the read-in offenses had been charged, Mr. Chambers would have been "look[ing] at over 100 years of possible exposure in confinement. That's not even counting extended supervision." (61:52).[2] Even if a total sentence is well within that type of global maximum, it can certainly be entirely disproportionate to the defendant's overall course of conduct if a large number of the sentences are run consecutively to each other.

[2] All citations to the circuit court record in this brief are to the record for Appeal No. 2019AP18-CR.

Accordingly, in a case like this one, which involves a large number of consecutive sentences, whether each individual sentence or the even the total sentence is well within the legal maximum is less important than in cases with only one sentence. Instead, the salient question here is whether the total sentence, in light of Mr. Chambers' entire course of conduct, "is so excessive and unusual and so disproportionate to the offense[s] committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See Grindemann*, 255 Wis. 2d 632, ¶31 (citing *Ocanas*, 70 Wis. 2d at 185).

Mr. Chambers' total sentence requires him to serve nearly an entire decade behind bars. (*See* 61:55; App. 155). For conduct that consisted almost entirely of lower level property crimes committed over a short period of time, that is utterly shocking and should offend the judgment of any reasonable person. Again, "this was teenage joy-riding. This was teenagers breaking windows and rifling through cars, playing with BB guns." (61:35; App. 135).

The total sentence is even more shocking given Mr. Chambers' mitigated background. At the time of his offenses, Mr. Chambers was only seventeen years old. He had not even graduated from high school yet. (61:22, 25-26; App. 122, 125-26). Research regarding juvenile brain development establishes that "juveniles have a 'lack of maturity and an underdeveloped sense of responsibility'; they 'are

more vulnerable or susceptible to negative influences and outside pressures, including peer pressure'; and their characters are 'not well formed.'" *Graham v. Florida*, 560 U.S. 48, 68 (2010) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)). They are therefore "less deserving of the most severe punishments." *Graham*, 560 U.S. at 68 (2010).

Moreover, placing a highly impressionable teenager in a prison environment where he is surrounded by high-risk offenders is likely to have a lasting negative impact on that teenager's development. (48:4-5; App. 181-82).

One also cannot ignore the fact that Mr. Chambers experienced numerous traumas during his childhood. He was abandoned by his biological father and raised by a neglectful mother who died of a drug overdose right in front of him when he was only six years old. (16:3; 61:23; App. 123, 172). Mr. Chambers was then separated from his biological siblings and placed in the foster care system. This caused him to grow up in an unstable and abusive environment that was void of structure, stimulation, and meaningful parental interaction. (16:4; App. 173; 61:23-24; App. 123-24).

Mr. Chambers also never received adequate mental health treatment to learn how to cope with his traumatic childhood. (16:3, 5; App. 172, 174). Finally, Mr. Chambers' negative circumstances were exacerbated by the fact that his adoptive mother had kicked him out of the house shortly before his

offenses in these cases, thereby placing him in a situation where he was particularly susceptible to negative peer influences and impulses. (61:33-34; App. 133-34).

The circuit court's sentence in these cases did not meaningfully account for the context and circumstances under which Mr. Chambers' crimes took place. The near-decade long total term of confinement the court imposed was completely disproportionate to the property crimes committed by Mr. Chambers, especially given his young age, lack of a prior record, and traumatic background. In fact, that excessive sentence will likely have a "re-traumatizing" effect on Mr. Chambers. (*See* 48:2; App. 179).

For all these reasons, Mr. Chambers' global sentence shocks the conscience and violates the judgment of reasonable people concerning what is right and proper under the circumstances. This is true regardless of whether the sentence is "well within" the total maximum.

CONCLUSION

For these reasons, Mr. Chambers respectfully requests that this court reverse the circuit court's postconviction order denying his motion for sentence modification and order that his sentences be modified by making his sentences on Counts 8 and 9 in Case No. 16-CF-613 concurrent with his other sentences, and making him eligible for the Substance Abuse

Program and Challenge Incarceration Program. Should the court decline to modify Mr. Chambers' sentences itself, then he requests that the court remand the cases to the circuit court for a determination of the appropriate sentence modification. Should the court conclude that sentence modification is not the appropriate remedy, then he requests that the court reverse the circuit court's postconviction order denying his motion for resentencing and remand the case for a resentencing hearing.

Dated this 2nd day of July, 2019.

Respectfully submitted,

LEON W. TODD
Assistant State Public Defender
State Bar No. 1050407

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202
(414) 227-4805
toddl@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,948 words.

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 § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after 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 2nd day of July, 2019.

Signed:

LEON W. TODD
Assistant State Public Defender