STATE OF WISCONSIN

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

DISTRICT IV

Case No. 2022AP2153-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THATCHER R. SEHRBROCK,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN THE CIRCUIT COURT FOR DODGE COUNTY, THE HONORABLE JOSEPH G. SCIASCIA PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

JOSHUA L. KAUL
Attorney General of Wisconsin

SONYA K. BICE
Assistant Attorney General
State Bar #1058115

Assisted by:
WILFREDO NAJARRO
Law Student Extern
Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3935
(608) 294-2907 (Fax)
bicesk@doj.state.wi.us

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

The standard of review requires this Court to look for reasons to sustain the discretionary decision to impose the probation condition at issue. This record contains good reasons to do so. The legislature granted judges "broad discretion" to set probation conditions because "when a judge allows a convicted individual to escape a prison sentence and enjoy the relative freedom of probation, he or she *must take reasonable judicial measures to protect society and potential victims from future wrongdoing*."[1] "[S]uch discretion is subject only to a standard of reasonableness and appropriateness."[2] Whether a condition meets that standard "is determined by how well it serves the dual goals of supervision"—rehabilitation and public protection; as long as it is "reasonably related" to these purposes, a condition needn't directly relate to the offense of conviction.[3]

Defendant-Appellant Thatcher R. Sehrbrock started his descent into alcoholism at 12. By the time he was 16, he was drinking a half-gallon of vodka a day. He committed the robbery in this case—his third felony by the age of 17—while "heavily drinking." Sehrbrock's record indicated to the court that "maybe it's time to do some prison,"[4] but it withheld sentence and accepted the parties' probation recommendation. Stating that "somebody who drinks as much as he drinks ought not be on the road unless he's in a car that

---

[1] *State v. Oakley*, 2001 WI 103, ¶ 12, 245 Wis. 2d 447, 629 N.W.2d 200 (emphasis added), *opinion clarified on denial of reconsideration*, 2001 WI 123, 248 Wis. 2d 654, 635 N.W.2d 760.

[2] *State v. Miller*, 2005 WI App 114, ¶ 11, 283 Wis. 2d 465, 701 N.W.2d 47.

[3] *Id.* ¶ 13.

[4] (R. 48:30.)

has ignition interlock,"[5] it ordered Sehrbrock to install such a device on his vehicle for as long as he was on probation.

When it denied Sehrbrock's motion to vacate the condition, the circuit court emphasized that the condition was imposed to protect the public from Sehrbrock and to protect him from himself. Referencing two reports from the jail that Sehrbrock had violated alcohol and drug rules while he was serving condition time, it stated that 1) it was "not willing to expose the public to the risk of getting hurt by somebody who . . . can't control their drinking," and 2) the IID condition was "an easy thing, common sense thing, to do to protect [Sehrbrock] against [him]self."[6] It reiterated that it would "gladly" modify the condition if he showed that it was no longer necessary.

On these facts, Sehrbrock cannot show that the circuit court erroneously exercised its discretion because the probation condition was reasonably related to the purpose of protecting the public from Sehrbrock and deterring him from criminal conduct if he was intoxicated. It was within the court's discretion to protect the public in this way rather than by sending Sehrbrock to prison. This Court should affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither.

---

[5] (R. 48:33.)

[6] (R. 71:9, 12.)

ISSUE PRESENTED

Is the probation condition requiring a young alcoholic to install an ignition interlock device (IID) on any vehicle he owns or operates reasonably related to the purpose of protecting the public?

The circuit court answered yes.

This Court should answer yes.

STATEMENT OF THE CASE

Sehrbrock committed the robbery in this case while "heavily intoxicated."

Two masked teenaged boys entered a Beaver Dam store after midnight on November 28, 2020. (R. 2:1; 10.) The first boy sprayed the clerk behind the counter with pepper spray, and both boys struggled with the clerk as he attempted to get their masks off. (R. 2:2–3.) After the struggle, both boys fled the store, dropping a sweatshirt and a bandanna. (R. 2:6; 10.) Store surveillance video helped police identify the first boy, and he told police that the plan was "to steal cigarettes and/or alcohol from a gas station." (R. 2:6.) He identified Sehrbrock as the other assailant. (R. 2:7.)

The State charged Sehrbrock with armed robbery as a party to a crime. (R. 10:1.)

Sehrbrock later described the events of that night to the circuit court: "The night at the gas station I made a stupid impulsive decision and I was heavily drinking at that time. Like every day." (R. 48:21.) Sehrbrock's mother stated that at the time of the robbery, "he was drinking straight vodka heavily. Not just that day, but every single day, all day, for months leading up to that incident." (R. 22:11.)

The presentence investigation detailed a severe addiction to alcohol from an early age.

In exchange for Sehrbrock's no contest plea, the State amended the charge to robbery with use of force as a party to a crime. (R. 18:1.) This amendment reduced the maximum penalty from 40 years' imprisonment to 15 years' imprisonment. (R. 47:13.)

A presentence investigation report (PSI) included the following information about Sehrbrock:

- Sehrbrock reported that he started drinking at 12 and reached a point when he was 16 and 17 where he was "drinking approximately 1.75 liter a day for a year straight." (R. 22:17.) His skin had "turned yellow." (R. 22:17.)
- He said that starting at 14, he used LSD "a lot," and also used amphetamines, codeine, ecstasy and mushrooms. (R. 22:17.) He also reported using cocaine, morphine, and nitrite inhalants. (R. 22:17.)
- Sehrbrock told the PSI writer that the robbery happened because he "was drunk and got peer pressured." (R. 22:3.) He also said he "had been drinking heavily prior to committing the offense and he blacked out." (R. 22:4.)
- He was adjudicated in a juvenile proceeding for resisting an officer when he was 15. (R. 22:6.) Sehrbrock explained to the PSI writer that he "was under the influence when [he] got picked up" and he "resisted arrest." (R. 22:7.)
- Sehrbrock told the PSI writer that his criminal record was a result of "[a] combination of being around [the] wrong people and poor choices because of alcohol and drug abuse." (R. 22:7.)

Sehrbrock's mother provided a statement to the PSI writer that corroborated Sehrbrock's account of a slide into substance abuse that started when he was in eighth grade. (R. 22:11.)

The sentencing recommendations of the parties and family members focused on Sehrbrock's alcohol addiction.

Each speaker at sentencing expressed variations on the same points: Sehrbrock was extremely young; his criminal history was troubling; there was reason to hope that he might yet overcome his alcohol addiction without the need for prison.

The PSI writer's sentencing recommendation was for a withheld sentence and five years of probation with one year of conditional jail time. (R. 22:23.) Defense counsel agreed with this recommendation. (R. 48:20.)

Sehrbrock's mother told the court that he was not "a harden[ed] criminal" but "an 18-year-old who has struggled with drug and alcohol addiction." (R. 48:6.) She asked the court not to send him to prison because it would not "address the actual root of the problem that led him here today." (R. 48:7.)

The prosecutor noted that Sehrbrock had two prior drug felony convictions and a misdemeanor conviction for criminal damage to property—all for offenses that predated the robbery. (R. 48:9–10.) The prosecutor also stated that it was important "to look at the addiction issues" raised in the PSI. (R. 48:11.) The State agreed with the PSI's sentencing recommendation, but with six to eight years of probation. (R. 48:13, 15.)

Sehrbrock told the court he was "heavily drinking" at the time of the crime, and he apologized for his actions. (R. 48:21.)

The circuit court noted that Sehrbrock had been "on a crime spree that year that included this and a few other cases." (R. 48:19.) It stated that the felonies on Sehrbrock's record indicated that "maybe it's time to do some prison." (R. 48:30.) After addressing Sehrbrock about the destruction substance abuse wreaks on individuals and society, the court announced that it would withhold sentence and order that Sehrbrock complete seven years of probation. (R. 48:30, 33.)

The circuit court then stated that it would order an ignition interlock device on Sehrbrock's vehicle as a condition of probation because "[s]omebody who drinks as much as he drinks ought not be on the road unless he's in a car that has ignition interlock." (R. 48:33.)

The circuit court also held out the opportunity to discharge Sehrbrock from probation[7] early: "If you're doing really, really well on probation your agent might say he doesn't need seven years, he's good to go and I'll approve that." (R. 48:33.)

The circuit court denied Sehrbrock's motion to vacate the probation condition requiring the IID until such time as he could show that it was unnecessary.

Sehrbrock moved to have the IID condition removed or in the alternative, to reduce the amount of time it would be required. (R. 51:1.) He argued that the condition "fails to further Mr. Sehrbrock's rehabilitation or the protection of a community interest in this case, and is therefore unreasonable and inappropriate." (R. 51:4.)

At a hearing on the motion, the circuit court rejected the argument that the condition was unrelated to Sehrbrock's rehabilitation. It referenced the two occasions that Sehrbrock

---

[7] The circuit court has statutory authority to "modify a person's period of probation and discharge the person from probation" under certain circumstances. Wis. Stat. § 973.09(3)(d).

had been disciplined in the jail for violating the alcohol and drug rules, saying, "what that tells me is substance abuse is an issue with Mr. Sehrbrock." (R. 71:11.) The jail had informed the court that Sehrbrock had reported to serve his sentence so severely intoxicated that he had to be sent to the hospital by ambulance (R. 39:3) and had on another occasion been caught with drugs (R. 58:1).

As for removing the IID condition, the court stated, "I'm not gonna put the public at risk if there's something I can do to minimize their risk, I'm gonna do it." (R. 71:12.) It told Sehrbrock, "[T]he ignition interlock is an easy thing, common sense thing, to do to protect you against yourself." (R. 71:12.)

The circuit court again expressed that Sehrbrock could return with some evidence that the condition was no longer necessary: it told Sehrbrock that it would "gladly consider lifting" the condition and would "entertain a motion to modify," but it said, "[Y]ou're gonna have to show me that you're dealing with this. And so far you haven't been able to do it." (R. 71:11, 13.)

STANDARD OF REVIEW

The trial court has broad discretion to impose reasonable and appropriate conditions of probation. *State* ¶ *King*, 2020 WI App 66, ¶ 20, 394 Wis. 2d 431, 950 N.W.2d 891. A court "review[s] such conditions under the erroneous exercise of discretion standard to determine their validity and reasonableness measured by how well they serve their objectives: rehabilitation and protection of the state and community interest." *Id.* ¶ 25 (citation omitted).

"The imposition of conditions of probation and extended supervision are discretionary matters for the circuit court—who is far more familiar with the particular offender than" a reviewing court and this Court is "to 'look for reasons to sustain a circuit court's discretionary decision.'" *State v.*

Williams-Holmes, 2022 WI App 38, ¶ 15, 404 Wis. 2d 88, 978 N.W.2d 523, (citation omitted), *review granted*, 2022 WI 107 (Nov. 16, 2022).

ARGUMENT

Sehrbrock has not shown that the sentencing court erroneously exercised its broad discretion to impose conditions of probation.

The trial court imposed the reasonable and appropriate condition that Sehrbrock install an IID as a condition of his probation to allow him to remain out of prison and to protect others in the community from him while he served his probation. Nothing limits an IID requirement to OWI convictions, and the sole test for evaluating a probation condition is whether it serves the purposes of rehabilitation and protection of the public. This condition does that.

Nor is the length of the condition excessive, especially in light of the circuit court's clear statements, both at sentencing and at the postconviction motion hearing, that it would remove the condition and even terminate probation early on a showing that it was no longer necessary.

A. The trial court has broad discretion to impose reasonable and appropriate conditions to protect the public from a felon who is placed on probation.

A trial court's authority to impose conditions on a term of probation is derived from statute. *See State v. Sepulveda*, 119 Wis. 2d 546, 554, 350 N.W.2d 96 (1984). When a sentencing court chooses to withhold sentence and place the defendant on probation, "[t]he court may impose any conditions which appear to be reasonable and appropriate." Wis. Stat. § 973.09(1)(a).

"[W]hen a judge allows a convicted individual to escape a prison sentence and enjoy the relative freedom of probation, he or she must take reasonable judicial measures to protect society and potential victims from future wrongdoing." *State v. Oakley*, 2001 WI 103, ¶ 12, 245 Wis. 2d 447, 629 N.W.2d 200, *opinion clarified on denial of reconsideration*, 2001 WI 123, 248 Wis. 2d 654, 635 N.W.2d 760. "To that end–along with the goal of rehabilitation–the legislature has seen fit to grant circuit court judges broad discretion in setting the terms of probation." *Id.* Our supreme court "recognize[d] that convicted felons may have trouble conforming their future conduct to the law," and stated that it therefore would "uphold the power of a judge to tailor individualized probation conditions per Wis. Stat. § 973.09(1)(a)." *Id.* ¶ 13.

"The theory of probation is that one convicted of a crime who is responsive to supervision and guidance may be rehabilitated without being imprisoned." *State v. Galvan*, 2007 WI App 173, ¶ 14, 304 Wis. 2d 466, 736 N.W.2d 890.

"It is . . . appropriate for circuit courts to consider an end result of encouraging lawful conduct, and thus increased protection of the public, when determining what individualized probation conditions are appropriate for a particular person." *State v. Rowan*, 2012 WI 60, ¶ 10, 341 Wis. 2d 281, 814 N.W.2d 854. "Unsurprisingly, public safety is often mentioned in connection with the goal of rehabilitation: decreased criminality and greater public safety are logically connected to successful rehabilitation efforts." *Id.* ¶ 18.

"Whether a condition of extended supervision is reasonable and appropriate is determined by how well it serves the dual goals of supervision: rehabilitation of the defendant and the protection of a state or community interest." *State v. Miller*, 2005 WI App 114, ¶ 11, 283 Wis. 2d 465, 701 N.W.2d 47.

This Court will uphold a condition of probation that is not directly related to the offense for which the defendant is convicted if it is otherwise valid. This Court has held that a "condition of probation need not directly relate to [the] crime for which [a] defendant [was] placed on probation where [the] defendant needs to be rehabilitated from related conduct." *State v. Beiersdorf*, 208 Wis. 2d 492, 503 n. 9, 561 N.W.2d 749 (Ct. App. 1997).

Sehrbrock bears the burden of proving that there is sufficient cause to modify or remove the condition of his extended supervision. *King*, 394 Wis. 2d 431, ¶ 24.

B. A defendant who challenges a circuit court's explanation of its sentence in a postconviction ruling has a heavy burden.

Precedent shows that a reviewing court gives weight to a circuit court's postconviction explanations when its sentencing statements are challenged. Our supreme court has stated, in a case considering a circuit court's postconviction explanation of its sentencing decision, "We do not, as a matter of course, presume that judges act capriciously without clear evidence supporting their actions." *State v. Robinson*, 2014 WI 35, ¶ 48, 354 Wis. 2d 351, 847 N.W.2d 352. "Quite the contrary—taking judges at their word is a fundamental assumption built into our legal system." *Id.* "In the absence of clear evidence to the contrary," a reviewing court will "decline to assign improper motive on the part of the circuit court." *Id.*

It is true that a circuit court's postconviction explanation of a challenged statement is not dispositive. *See State v. Groth*, 2002 WI App 299, ¶ 28, 258 Wis. 2d 889, 655 N.W.2d 163. But the defendant has the burden to provide "clear evidence to the contrary," *Robinson*, 354 Wis. 2d 351, ¶ 48, and the circuit court's explanation is credited unless such evidence is provided.

C. The record contains reasons to sustain the circuit court's exercise of discretion.

A circuit court that makes the decision to allow a convicted person to be placed on probation rather than sending the person to prison has an obligation to the public to "take reasonable judicial measures to protect society and potential victims from future wrongdoing." *Oakley*, 245 Wis. 2d 447, ¶ 12. When the circuit court does so, this Court must "look for reasons to sustain" its decision. *Williams-Holmes*, 404 Wis. 2d 88, ¶ 15. The question a reviewing court is to ask is whether "the condition is reasonably related to the dual purposes" of defendant rehabilitation and public protection. *Miller*, 283 Wis. 2d 465, ¶ 13.

This Court thus is to look at this record for reasons to sustain the circuit court's conclusion that the IID condition is reasonably related to Sehrbrock's rehabilitation and public protection. The record contains ample reasons to do so.

The circuit court's stated reason for imposing the condition was that, due to his heavy drinking, Sehrbrock "ought not be on the road unless he's in a car that has ignition interlock." (R. 48:33.) A fair inference from that statement is that the circuit court was thinking of others "on the road" and their safety. It made that link explicit at the postconviction motion hearing when it stated that it was unwilling to expose the public to the risk of having Sehrbrock on the road without an IID. (R. 71:10–12.) It also stated that the IID would protect Sehrbrock from himself—implying that it would prevent him from driving a car while intoxicated. (R. 71:12.)

This Court should credit the circuit court's explanation. *See Robinson*, 354 Wis. 2d 351, ¶ 48.

If this Court concludes that the circuit court's explanation is inadequate to establish that the condition is reasonably related to Sehrbrock's rehabilitation and public safety, it is to "look for reasons" in the record to sustain the

circuit court's decision. *Williams-Holmes*, 404 Wis. 2d 88, ¶ 15. There is no question on this record that Sehrbrock's alcoholism is severe, that it played a significant role in his criminal conduct, and that Sehrbrock had, at the time of the circuit court's decision in this case, made no showing that he could be trusted to make the decision to drive only while sober. Instead, the record showed that even after his conviction, Sehrbrock continued to show a high tolerance for risk and rule-breaking, and dangerous substance use. Despite signing a form instructing him not to report for his sentence intoxicated, he showed up at the jail so impaired he had to be sent to the hospital. (R. 39:1.) He told jail staff that he had consumed most of a bottle of vodka the previous day and had taken unprescribed Percocet pills. (R. 39:2.) This violation resulted in the loss of his work-release privileges for 60 days. (R. 41.) He later was found to be hiding an unprescribed pill (R. 58), and this violation resulted in the revocation of his work-release privileges for the remainder of his conditional jail sentence. (R. 60.)

Nor is there any question on this record that the circuit court considered imposing prison but that Sehrbrock's age weighed against a prison disposition. The court told him, "You are getting the benefit of the fact that you're a young person." (R. 48:30.)

The record also shows that the circuit court tried to impress on Sehrbrock what was at stake with his substance abuse. It referred to having served as the drug court judge. (R. 48:25.) It mentioned how "depressing" it is to read PSI reports detailing alcohol and drug use like Sehrbrock's "time after time." (R. 48:22.) It described watching people "go to inpatient and go through, hold their breath for a year in drug court and walk out of there with a certificate and get arrested two days later for dealing." (R. 48:25.) This was the context in which the circuit court made its comments comparing

addition to "the devil," telling Sehrbrock, "[Y]ou are up against the most powerful devil in the world." (R. 48:25.)

The circuit court knew based on Sehrbrock's history and its own judicial experience that the risk was great that Sehrbrock would drink again if he was not in prison. Consistent with its responsibility to protect the community from a felon it was leaving out of prison, it used a tool at its disposal to keep him from driving and endangering others—and committing another crime. *See Rowan*, 341 Wis. 2d 281, ¶ 18 ("Unsurprisingly, public safety is often mentioned in connection with the goal of rehabilitation: decreased criminality and greater public safety are logically connected to successful rehabilitation efforts.").

The record contains reasons for this Court to sustain the circuit court's exercise of discretion.

D. Sehrbrock's arguments are unpersuasive.

Sehrbrock argues that the IID condition "must be removed" because it is unrelated either to his rehabilitation or to public safety. (Sehrbrock's Br. 9.) He is wrong.

He implies that it was improper that the circuit court "imposed that condition on its own" even though no party requested it. (Sehrbrock's Br. 9.) But a judge who imposes probation rather than a prison sentence for a felony "must take reasonable judicial measures to protect society and potential victims from future wrongdoing." *Oakley*, 245 Wis. 2d 447, ¶ 12. It is therefore not relevant that the parties did not request the condition.

He argues that the circuit court imposed the condition "because, in its view, the fact that Mr. Sehrbrock was intoxicated at the time of the offense meant that he had 'surrendered [his] decision making to the devil,'" (Sehrbrock's Br. 9), but this statement is an imprecise characterization of the transcript. The circuit court did not say it was imposing

the condition because Sehrbrock was intoxicated at the time of the offense. When it imposed the condition, it stated, "Somebody who drinks as much as he drinks ought not be on the road unless he's in a car that has ignition interlock." (R. 48:33.)

Sehrbrock argues that the IID condition is "completely unrelated" to the robbery offense. (Sehrbrock's Br. 9.) But this Court sustains probation conditions even when they do not "directly relate" to the offense, so long as the "defendant needs to be rehabilitated from related conduct." *Beiersdorf*, 208 Wis. 2d at 503 n. 9. On this record, a condition that prevented Sehrbrock from driving while intoxicated would not be improper, given his need to be rehabilitated from the "related conduct" of substance abuse, regardless of whether he was intoxicated during the robbery.

Sehrbrock also argues that the IID condition is "completely unrelated" to his rehabilitation. (Sehrbrock's Br. 9.) He is wrong. The circuit court viewed it as a guardrail to protect Sehrbrock from himself. (R. 71:12.) It is fair to infer from the context that it meant that the IID condition would keep him from risking an OWI offense. Just before that comment, the court had stated that Sehrbrock had gotten himself "into a lot of trouble" with alcohol. (R. 71:12.)

Sehrbrock argues that the circuit court insufficiently explained its reasoning because it "did not tie the requirement to Mr. Sehrbrock at all." (Sehrbrock's Br. 11.) But that ignores the larger context of the record, which is that the court was making the risky decision to impose probation in a situation that called for prison—and make public safety decisions accordingly. That context is what ties the requirement to Sehrbrock.

He implies that the condition was unnecessary because "as set forth in the PSI and letters filed with the circuit court, Mr. Sehrbrock was no longer consuming alcohol . . . ."

(Sehrbrock's Br. 12.) This appears to refer to two letters filed before the sentencing. (R. 24.) Sehrbrock did not argue in his postconviction motion or hearing that he was no longer consuming alcohol. (R. 51:1–7.) Nor could he. The circuit court had been informed of Sehrbrock's post-sentencing alcohol use by both the jail and by Sehrbrock's mother. (R. 38; 39.)

Sehrbrock argues that the conditions of absolute sobriety and required treatment "already offer protection of the community" and make the IID condition unnecessary. (Sehrbrock's Br. 12.) He cites to language from a case where this Court made a similar comment, but he does not provide the context for that comment. In that case, this Court held that a probation condition that banished a defendant from a township in order to protect several neighbors he had victimized was unconstitutionally overbroad. *State v. Stewart*, 2006 WI App 67, ¶ 16, 291 Wis. 2d 480, 713 N.W.2d 165. The condition was challenged on constitutional grounds because it imposed geographical limitations, and the Court's comment about the other conditions that protected the victims was part of the constitutional analysis—whether the aims of the condition could be accomplished in a way that was not "unduly restrictive of [the defendant's] liberties." *Id.* ¶ 22. The *Stewart* language has no relevance here because there is no constitutional dimension to this case and thus no requirement that the condition be narrowly drawn.

Sehrbrock argues that merely telling him not to drink is sufficient: "If he's not drinking, there is no danger of drinking and driving." (Sehrbrock's Br. 13.) A circuit court that is taking measures to protect the public from a potentially dangerous felon is not required to accept that assertion.

Sehrbrock argues that the imposition of the expense of the IID condition is counterproductive to his rehabilitation. (Sehrbrock's Br. 13.) It is reasonable to expect that the circuit court, having experience in drug court, would be aware of the

relevant pros and cons of IIDs. Such decisions are well within the circuit court's sound discretion.

Sehrbrock argues that the condition is, if nothing else, too long, and this Court should shorten it. But this argument fails logically because the court imposed it to protect the public and made a clear record at both sentencing and at the postconviction motion hearing that it would modify the condition or terminate probation early if Sehrbrock showed that it was no longer needed because he was doing well. If Sehrbrock fails to maintain sobriety, the public will still need the protection the condition is intended to provide. If he succeeds, the condition can be lifted. There is no basis for the conclusion that the circuit court has discretion to protect the public for one year and not for seven.

Finally, Sehrbrock quotes at length from the circuit court's remarks addressing Sehrbrock on the topic of addiction, especially its references to "the devil." (Sehrbrock's Br. 13–14.) As noted above, the context of the sentencing reflects the circuit court's understandable frustration at the heartbreak of addiction, and its understandable attempt to impress on an 18-year-old defendant how high the stakes are. Rejecting a claim that a trial judge had been insufficiently neutral in the courtroom, the Wisconsin Supreme Court stated the obvious: "[J]udges are human and their emotions are influenced by the same human feelings as other people." *Breunig v. American Family Ins. Co.*, 45 Wis. 2d 536, 547, 173 N.W.2d 619 (1970). That happened here. But a complete reading of the transcript supports the conclusion that the circuit court listened to the parties and accepted a resolution that was unusually lenient on these facts. This record contains ample reasons to sustain the circuit court's exercise of discretion.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 16th day of May 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Sonya K. Bice
SONYA K. BICE
Assistant Attorney General
State Bar #1058115

Assisted by:
WILFREDO NAJARRO
Law Student Extern
Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3935
(608) 294-2907 (Fax)
bicesk@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,084 words.

Dated this 16th day of May 2023.

Electronically signed by:

Sonya K. Bice
SONYA K. BICE
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 16th day of May 2023.

Electronically signed by:

Sonya K. Bice
SONYA K. BICE
Assistant Attorney General