STATE OF WISCONSIN

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

DISTRICT I

Case No. 2023AP1124-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAETWAN C. ROBINSON,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING RESENTENCING, ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE JANET C. PROTASIEWICZ PRESIDING AT SENTENCING, THE HONORABLE ELLEN R. BROSTROM PRESIDING POSTCONVICTION

# BRIEF OF PLAINTIFF-RESPONDENT

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## ISSUE PRESENTED

Did the trial court erroneously exercise its sentencing discretion?

Defendant-Appellant Daetwan Robinson pled guilty to two counts of hit and run causing death and one count of hit and run causing great bodily harm. Six other felony counts were dismissed but read into the record for sentencing purposes. The trial court, the Honorable Janet C. Protasiewicz presiding, imposed an aggregate prison sentence of twenty years of initial confinement followed by ten years of extended supervision. The trial court on postconviction review, the Honorable Ellen R. Brostrom presiding, held that Robinson failed to prove Judge Protasiewicz erroneously exercised her sentencing discretion.

This Court should affirm. The trial court properly weighed several relevant factors before it imposed a sentence that was less than half of the statutory maximum for these serious and aggravated offenses.

## POSITION ON ORAL ARGUMENT AND PUBLICATION

This case does not merit oral argument or publication. It involves deferential review of a trial court's thorough exercise of sentencing discretion.

## INTRODUCTION

Robinson, who had no license, sped through a busy intersection around a stopped car and struck three small children in the crosswalk for whom other drivers had stopped, killing two and seriously injuring the third one. He then fled the scene, tried to conceal his crimes, and lied repeatedly that he was innocent before finally admitting his guilt in court.

When all is said and done, Robinson believes his sentence is too long because he did nothing wrong other than

leave the scene of an accident, the children share the blame for crossing against the light, and other drivers share the blame for letting them cross against the light. The court was not persuaded.

The trial court arrived at the sentence after carefully balancing Robinson's positive personal characteristics against the seriousness of Robinson's crimes, aggravated as they were by his lack of a license, reckless driving, and efforts to conceal evidence. The court properly gave significant weight to the devastating impact of his crimes on the victims and their families, to the interest in protecting the public from reckless unlicensed drivers such as Robinson, to the interest in deterring others from driving recklessly and fleeing accident scenes, and to the interest in punishing Robinson for his crimes.

## STATEMENT OF THE CASE

At around 5:30 p.m. on October 24, 2019, four-year-old A.N.G., her six-year-old sister A.Z.G., and their ten-year-old cousin D.R.G. were skipping merrily along across a playground as they approached the intersection of 22nd and Center Streets in Milwaukee. They tried to cross the busy intersection with the walk light but could not because of traffic turning in front of them. When the light changed to red, a driver who was stopped at the green light heading westbound apparently waved the children across. Two cars heading westbound and one car heading eastbound patiently waited as the children traversed the crosswalk on the red light. Despite the stopped traffic, the unlicensed Robinson heading eastbound on Center Street blew past the stopped car on the right side, far in excess of the 25 m.p.h. speed limit, and crashed into the children in the crosswalk, throwing them into the air. (R. 2:3–5; 98:36–37, 68–69.) As alleged in the complaint:

> The police located numerous eye-witnesses to the crash. All uniformly stated that the striking vehicle was eastbound on W. Center Street at a high rate of speed in the bicycle lane, passing all the other cars which were stopped at the intersection to allow the children to cross. This car struck all three of the children as they were in the crosswalk, walking together from the north to the south side of Center Street. The witnesses stated that the striking vehicle fled the scene.

(R. 2:4.)

The two little sisters died, and their cousin sustained several serious injuries. (R. 2:3–4.)

This was all confirmed in a video of the crash from a surveillance camera atop a nearby school. After viewing the grisly video, the trial court found that Robinson "blew around" the stopped car into the intersection at a high rate of speed. (R. 98:73.)

Robinson didn't stick around. As alleged in the complaint and shown on the police video, Robinson fled down 21st Street, only to later return to the scene with his brother looking for a missing piece from his car. (R. 98:19–20, 23–24.) Robinson hid his damaged car in a family garage, inquired about junking the car, spray painted it, fled briefly to Illinois, and lied to others about his involvement in the crash. (R. 2:4–5; 98:24–26.)

Robinson initially faced nine felony counts with a maximum exposure of 225 years in prison: two counts of first-degree reckless homicide, one count of first-degree reckless injury causing great bodily harm, two counts of hit and run causing death, one count of hit and run causing great bodily harm, two counts of operating a motor vehicle with a suspended license causing death, and one count of operating a motor vehicle with a suspended license causing great bodily harm. (R. 29; 30.)

After plea negotiations, Robinson pled guilty to two counts of hit and run causing death and one count of hit and run causing great bodily harm. The other six felonies were dismissed but read into the record for sentencing purposes. The agreement allowed the State to recommend consecutive prison sentences with "substantial" initial confinement, while Robinson was "free to argue" for whatever sentence he believed appropriate. (R. 59; 63:2; 86:4–5.) Robinson pled guilty to the three counts of hit and run as alleged in the amended information on March 25, 2021. (R. 86:4, 10–11, 17.) The maximum exposure for the three counts to which Robinson pled was 65 years in prison. (R. 59; 63:1.)

The court imposed consecutive prison sentences of ten years of initial confinement followed by five years of extended supervision for the two counts of hit and run causing death, and a concurrent sentence of three years of initial confinement and three years of extended supervision for the count of hit and run causing great bodily harm. (R. 98:77.) The court added that its sentence would have been greater but it gave Robinson credit for finally accepting responsibility, and it acknowledged the strong community support for Robinson and his future potential, "but I cannot go less than 20 years." (R. 98:78.)

Robinson filed a postconviction motion for resentencing, arguing that the court erroneously exercised its sentencing discretion. (R. 132.) The postconviction court, the Honorable Ellen R. Brostrom now presiding, denied the motion in a Decision and Order issued on June 6, 2023. (R. 133.)

Robinson appeals. (R. 134.) He seeks resentencing on the ground that Judge Protasiewicz erroneously exercised her sentencing discretion.

The State will discuss the sentencing and postconviction proceedings in greater detail in the Argument section of this brief.

## STANDARD OF REVIEW

Review of a sentence is deferential, limited to whether the trial court erroneously exercised its discretion. *State v. Harris*, 2010 WI 79, ¶ 3, 326 Wis. 2d 685, 786 N.W.2d 409. "Sentencing decisions are afforded a presumption of reasonability consistent with Wisconsin's strong public policy against interference with a circuit court's discretion." *Id.*

The sentencing court is presumed to have acted reasonably, and the defendant bears the burden of proving an unreasonable or unjustifiable basis in the record for the sentence imposed. *State v. Davis*, 2005 WI App 98, ¶ 12, 281 Wis. 2d 118, 698 N.W.2d 823. Due to this presumption of reasonableness, the burden of proving an erroneous exercise of sentencing discretion is a "heavy" one. *Harris*, 326 Wis. 2d 685, ¶ 30.

## ARGUMENT

**The trial court gave proper weight to several relevant and appropriate factors before imposing a sentence that was less than half the statutory maximum.**

"[T]he victims had no right to be in that intersection but Mr. Robinson did." (R. 98:42.) That was Robinson's main theme at sentencing.

Robinson takes the concept of victim-blaming to a new low. No less than a dozen times in his sentencing remarks, Robinson's attorney trumpeted the refrain that the children share the blame because they should not have crossed against the light. (R. 98:35, 38, 39, 40, 41, 42, 44, 45, 50.) He continues that refrain here. (Robinson's Br. 9–10, 11–12, 29–30.) Robinson's temerity does not stop there. He also blames three other drivers for his fate. "Three vehicles had acted recklessly at this point, two in failing to yield and one in encouraging children to cross on a "DON'T WALK" signal." (Robinson's Br. 12.) Moreover, this is not a civil action where any contributory

or comparative negligence might matter. It is a criminal action where those concepts are totally irrelevant. Wis. Stat. § 939.14.

Robinson portrayed himself as the "victim." The trial court was not impressed. The video confirms that the only one to blame was Robinson. He was going far too fast to react and should not have been on the road at all because he did not have a license.

### A. The sentencing court properly exercises its discretion when it considers a variety of relevant factors and gives each its appropriate weight.

The primary factors the court must consider when exercising its sentencing discretion are "the gravity of the offense, the character of the [offender], and the need to protect the public." *Harris*, 326 Wis. 2d 685, ¶ 28. The court may consider a variety of other factors, as well, including the defendant's criminal history, his personality and social traits, the results of a presentence investigation, the aggravated nature of the crime, the defendant's culpability, his age and education, his remorse or lack thereof, his cooperation, his need for close rehabilitative control, and the rights of the public. *Id.*; *State v. Gallion*, 2004 WI 42, ¶¶ 43–44, 270 Wis. 2d 535, 678 N.W.2d 197; *see* Wis. JI–Criminal SM-34 (1999). The court also may consider the impact of the crime on the victims because it is relevant to the gravity of the offense. *Gallion*, 270 Wis. 2d 535, ¶ 65.

The court has considerable discretion in deciding what weight to give each factor it considers. *Harris*, 326 Wis. 2d 685, ¶ 28. The trial court errs only if it "gives too much weight to one factor in the face of other contravening factors." *State v. Steele*, 2001 WI App 160, ¶ 10, 246 Wis. 2d 744, 632 N.W.2d 112.

The sentencing court is not required to address all relevant sentencing factors on the record. *State v. Echols*, 175 Wis. 2d 653, 682–83, 499 N.W.2d 631 (1993). The court must identify the most relevant factors and explain how the imposed sentence will further its sentencing objectives. *Harris*, 326 Wis. 2d 685, ¶ 29.

The court also has considerable discretion in determining the length of the sentence within the permissible statutory range. *Hanson v. State*, 48 Wis. 2d 203, 207, 179 N.W.2d 909 (1970). "The court must provide an explanation for the general range of the sentence imposed, not for the precise number of years chosen, and it need not explain why it did not impose a lesser sentence." *Davis*, 281 Wis. 2d 118, ¶ 26 (citing *Gallion*, 270 Wis. 2d 535, ¶¶ 49–50, 54–55); *see State v. Klubertanz*, 2006 WI App 71, ¶¶ 17, 22, 291 Wis. 2d 751, 713 N.W.2d 116 (same).

"The interests of both society and the individual must be weighed in each sentencing process." *McCleary v. State*, 49 Wis. 2d 263, 271, 182 N.W.2d 512 (1971). "The sentencing court must assess the crime, the criminal, and the community, and no two cases will present identical factors." *State v. Lechner*, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998) (citation omitted).

### B. The parties and the trial court addressed several relevant factors at sentencing.

At sentencing on June 5, 2021 (R. 98), the trial court announced at the outset that it had viewed a fifteen-minute video prepared by Milwaukee Police Detective Eric Draeger that included footage of the fatal crash, along with Robinson's movements before and after. (R. 86:17; 98:7.) The court also reviewed sentencing memoranda submitted by Robinson's attorney and submissions by both parties regarding sentences imposed in other hit-and-run homicide cases from 2017 through 2021. (R. 70; 71; 72; 73; 98:7–8.)

*The State's Presentation*

In her sentencing remarks, the prosecutor focused on the seriousness of the offenses, on Robinson's flight and efforts to conceal his culpability, and on his driving repeatedly without a license. (R. 98:8–33.) The prosecutor noted that Robinson had been stopped four times in October 2019 alone for operating without a license. On one of those occasions, he was involved in a minor accident involving the same car that struck the children. (R. 98:9.) According to every eyewitness, Robinson approached the intersection at a high rate of speed—one witness estimated his speed at 60 miles per hour—while two cars were stopped at the intersection westbound and one eastbound to let the children cross. (R. 98:18–19.) Their accounts are corroborated by the video. After the crash, Robinson sped off while others immediately rushed to the aid of the children. (R. 98:19–20.) Robinson, with the help of others, hid his damaged car in his family's garage. (R. 98:20–22.)

The prosecutor noted further that Robinson and his brother returned to the scene twice looking in vain for a piece of the fender that broke off in the crash. (R. 98:23–24.) Robinson sent a text message to his cousin inquiring about junking the car. (R. 98:24.) When his cousin answered that he needed identification to junk the car, a friend agreed to let Robinson use her identification. (R. 98:24–25.) Robinson, his brother, and a family friend left for Illinois later that night. (R. 98:25–26.) They eventually returned and Robinson sent a Facebook message to his brother telling him to buy spray paint. They then spray painted the car and removed the window tint in the family garage. (R. 98:26.) When police found the car in the garage while executing a search warrant, they recovered no fingerprints or other forensic evidence because everything had been removed from inside the car and the interior was wiped down completely, still wet to the touch. (R. 98:27.) Police recovered the portion of the front fender that

broke off at the scene and that Robinson twice returned to the scene in vain to find. It fit the hole in the fender perfectly, as shown in the video. (R. 98:27.)

The prosecutor described Robinson as "flippant" when questioned by police, and he denied any wrongdoing. (R. 98:27–28.) In jail calls intercepted by police, including one played at the end of the video, Robinson denied ownership of the car and denied driving the car that day. In other jail calls, Robinson copped an attitude of denial, defiance, and blaming others, including the media. (R. 98:28.)

Also in her sentencing remarks, the prosecutor acknowledged Robinson's positive attributes—no criminal record, positive contributions to the community, employment, an engaging personality, and family support (R. 98:29)—but she observed that there is another side to Robinson, as reflected in his actions in this case (R. 98:29–30). In closing, the prosecutor emphasized the devastating impact Robinson's actions had on the victims who Robinson left lying in the street and on their families. (R. 98:31–32.)

The mother of the two deceased victims, D.F., described the devastating impact that Robinson's actions have had on her and her lone surviving child. (R. 98:34–35.)

*Robinson's Presentation*

In his sentencing remarks (R. 98:35–51), defense counsel repeatedly emphasized that the children were crossing against the light and that, by the rules of the road, Robinson had the right to go around the car stopped in front of him at the green light (R. 98:35, 38, 39, 40, 41, 42, 44, 45, 50). Robinson, counsel argued, was only guilty of fleeing the scene of what he called an "accident." (R. 98:47.) While Robinson may have been speeding, perhaps as much as 20 miles over the posted 25 m.p.h. limit on Center Street (R. 98:39), counsel insisted that he did not drive recklessly. This "accident" would not have happened had the children not

crossed against the light. (R. 98:42, 47.) Counsel acknowledged, however, that this tragedy may have been avoided had Robinson been going slower. (R. 98:49.) Even so, Robinson was guilty only of failing to remain at the scene of an accident; he was not guilty of reckless driving. (R. 98:39, 41.) "[T]he victims had no right to be in that intersection but Mr. Robinson did." (R. 98:42.)

While counsel acknowledged, when challenged by the court, that Robinson was driving without a license and had been stopped four times in October for operating without a license, including once after an accident (R. 42:1–2), he blamed police for letting Robinson go each time without issuing a citation (R. 98:42). Counsel argued that, unlike other hit and run homicides that brought prison sentences, there were no aggravating factors here such as drunk driving or a high-speed chase. (R. 98:44.) The facts of this case merited probation because this was an unfortunate accident where the victims crossed against the light. (R. 98:44, 50.)

Counsel also argued against imposing consecutive sentences because Robinson committed only one act that, unfortunately for him, had multiple victims. (R. 98:44–45.) He argued that consecutive prison sentences are appropriate only for intentional homicides. (R. 98:45.)

Counsel pointed to the many letters from the community vouching for Robinson's character and expressing strong support for him. (R. 98:46–47.) Counsel recommended probation with imposed but stayed sentences or, alternatively, concurrent prison sentences of five years of initial confinement for the two counts of hit and run causing death, and three years of initial confinement for the count of hit and run causing great bodily harm, with the length of extended supervision up to the court. (R. 71:4; 98:51.)

Several witnesses spoke on Robinson's behalf, vouching for his character and his contributions to the community. (R. 98:52–60.)

In exercising his right of allocution, Robinson apologized to the victims' families and expressed remorse. (R. 98:61–65.) Robinson stated, "I didn't fully stop, I went around the car [and] . . . they were there." (R. 98:62.) Robinson acknowledged, "I shouldn't have been in the car." (R. 98:63.) Robinson concluded his remarks by stating that had he known what would happen, he wouldn't have gotten into the car that day. (R. 98:63.)

*The Trial Court's Remarks*

Before making its sentencing remarks, the trial court showed the fifteen-minute video prepared by Detective Draeger of the events leading up to and following the crash, and of the crash itself, in open court. (R. 98:65–67.)

In exercising its sentencing discretion on the record, the trial court gave significant weight to the gravity of Robinson's crimes that were aggravated by his speed and reckless driving without a license, and by his concerted efforts to conceal and destroy evidence after fleeing the scene. (R. 98:68–78.) The court also gave significant weight to the need to protect the public from unlicensed reckless drivers and to deter others from reckless driving on city streets. The court balanced these factors against Robinson's clean criminal record, generally good character, and community support before imposing the prison sentence. (R. 98:68–78.)

### C. The trial court properly weighed several relevant and appropriate sentencing factors.

Robinson believes the trial court gave too much weight to the gravity of his offenses, the need to punish him, and the interest in deterring others from reckless driving, and did not

give enough weight to his positive attributes and his potential for rehabilitation outside of prison. The record shows conclusively that the trial court followed *Gallion* to the letter and properly exercised its discretion in reliance on a number of relevant factors.

### 1. The trial court properly weighed the gravity of the offenses.

The court was greatly moved by the gravity of these offenses. (R. 98:68.) "Obviously, it doesn't get more serious." (R. 98:73.) The court rightly found, after viewing the video of the crash, that Robinson "blows around" the stopped car before striking the children. (R. 98:69.) The children all fly through the air as if "weightless." (R.98:69.) The court also emphasized that Robinson should not even have been on the road because he did not have a driver's license. (R. 98:69–70.) Robinson had been stopped for operating without a license four times in October alone, but that did not prevent him from driving. (R. 98:70.) The court remarked further: "I watched [on the video] the way you were operating your motor vehicle. It was reckless and you weren't licensed." (R. 98:70.) "[Y]ou blew around that car when you shouldn't have been behind a wheel at all." (R. 98:73.)

Robinson tries to shield himself behind the rules of the road to diminish his culpability. He points out repeatedly that the children were crossing against the light and that he had the right to pass a stopped car turning left on a green light. (R. 71:1–2; 98:38–39, 41–42.) But the rules of the road do not allow a driver to greatly exceed the speed limit when passing on the right. The rules of the road do not allow a driver to speed around a stopped car at a green light no matter who or what is in the intersection. The rules of the road do not allow an unlicensed person to drive, period.

Moreover, there is no evidence that the stopped car in front of Robinson in the eastbound left lane had activated its

left turn signal. Robinson admitted in his sentencing memorandum that he did not see a turn signal as he pulled around the white car stopped in front of him at the green light. (R. 70:6.) Two westbound cars also were stopped. Any reasonable driver would have suspected that something caused them all to remain stopped at a green light at this busy intersection, and he should have at least slowed down to find out why they were stopped. Robinson either was in too big a hurry to find out why or was going too fast to notice and react.

The undisputed facts, as reflected in the video, are that Robinson was speeding, perhaps as much as 20 to 35 miles above the 25 m.p.h. posted limit. Robinson's attorney conceded at sentencing that he may have been going as fast as 40 or 45 m.p.h. (R. 98:39.) Three cars were stopped at the intersection patiently waiting in both directions for the children to traverse the crosswalk when Robinson decided to speed around the stopped traffic. (R. 98:19.) Robinson was driving without a license and had been stopped for that offense four times earlier in October, once after an accident, but that didn't deter him from driving. So, as it turns out, the children had every right to be in the intersection because the other drivers in both directions allowed them to cross, whereas Robinson had no right to be in that intersection as a matter of law because he paid no heed to the stopped traffic, was going far too fast to avoid the unexpected, and wasn't licensed to drive. The blame for this tragedy rests completely on his shoulders.

Had Robinson not been there because he had no license to drive, the children would have crossed safely. Had Robinson not far exceeded the speed limit, the children may have made it safely across because he likely would have had time to stop or avoid hitting them if travelling at the 25 m.p.h. limit. Had Robinson just slowed and waited patiently like the other three drivers, the children would have crossed safely. He failed on every count.

### 2. The trial court properly weighed the interest in protecting the public and deterring others.

The trial court properly gave significant weight to the interests in protecting the public from drivers like Robinson, and in deterring others like Robinson who might think twice about driving recklessly and without a license, because a long prison sentence awaits if their actions cause serious injury or death. The court referred to the "rash" of reckless driving and hit-and-run crashes in the city, "and the ruin that is left in their path." (R. 98:71.) The court remarked that people "are fed up" with reckless driving that has become "an epidemic" in Milwaukee. (R. 98:71–72.)

Deterrence of others is one of the primary factors a court may consider when imposing sentence. *Gallion*, 270 Wis. 2d 535, ¶ 40. Protection of the public is another. *Id.* "Circuit courts are required to specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." *Id.*

Protecting the public is a long-recognized proper factor to be considered when deciding what sentence to impose, *Gallion*, 270 Wis. 2d 535 ¶ 40. It is, along with the gravity of the offense and character of the offender, one of the three primary factors a court must always consider at sentencing. *Harris*, 326 Wis. 2d 685, ¶ 28.

### 3. The trial court properly weighed the impact on the victims and their families.

The court gave significant weight to the impact of Robinson's crimes on the victims and their families. (R. 98:73.) It is proper to consider "the impact of the crime on the victim or victim's family. " *Gallion*, 270 Wis. 2d 535, ¶ 65; *see*

*State v. Ninham*, 2011 WI 33, ¶ 96, 333 Wis. 2d 335, 797 N.W.2d 451 (same). While Robinson may have a promising future, the court observed, the victims have no future and their families are devastated. (R. 98:75.)

**4. The trial court properly weighed the need to punish Robinson.**

The court also gave significant weight to the need to punish Robinson when it rejected probation. (R. 98:76–77.) The objectives of the sentence were to both punish Robinson for his reckless conduct and to deter others from engaging in similar reckless conduct. (R. 98:77.) *See Gallion*, 270 Wis. 2d 535, ¶ 61 ("The court also observed that society has an interest in punishing Gallion so that his sentence might serve as a general deterrence against drunk driving.").

**5. The trial court properly weighed Robinson's character.**

In assessing Robinson's character, the court described it as a "mixed bag." (R. 98:74.) The court acknowledged his accomplishments and community support (R. 98:73), but found it incongruous with his "reckless, irresponsible" behavior that day (R. 98:73). When Robinson is behind the wheel, "all sense flies out the window" even though the consequences are "so very serious and so very dire." (R. 98:72.) Robinson fled the scene while others stayed to help the victims. (R. 98:73–74.) "[I]t's pretty clear to me that saving your own skin was much more important . . . ." (R. 98:74.) The court noted that Robinson returned to the scene twice in a vain effort to find the missing piece of the car, lied to police, lied to others in his many recorded jail calls, fled briefly to Illinois, and tried to alter the appearance of his car and wipe it clean of any forensic evidence. (R. 98:74.)

While acknowledging Robinson's overall good character, the court was unsure whether he still would pose a

threat to the community when he drives again. (R. 98:75.) The court noted that Robinson drove repeatedly without a license before the crash, and it was not sure whether he has learned his lesson. (R. 98:75.)

### D. The trial court properly gave less weight to Robinson's need for rehabilitation.

Robinson complains that the trial court did not consider his need for rehabilitation. (Robinson's Br. 18–24.) It is plain that the court weighed this factor but gave it less weight than the other factors. Judge Brostrom properly rejected Robinson's claim that Judge Protasiewicz failed to address Robinson's rehabilitation needs. (R. 133:3–4.)

The court was not sure whether Robinson could be rehabilitated from driving recklessly and unlicensed in the future. (R. 98:75.) Perhaps Robinson could be rehabilitated either in or out of prison, perhaps not. Robinson's potential for rehabilitation is not what motivated the court to impose this sentence. The court acknowledged that Robinson's character was generally good, but it was a "mixed bag" given his reckless driving without a license, his flight from the scene, and his efforts to conceal evidence. (R. 98:74.) Lengthy imprisonment was called for primarily to punish Robinson for his serious crimes and to deter others, and less so to rehabilitate him.

The trial court properly could give more weight to the factors it relied on, and little weight to Robinson's potential for rehabilitation. *Harris*, 326 Wis. 2d 685, ¶ 28. Robinson concedes this. (Robinson's Br. 24 ("It was within the sentencing judge's broad discretion at sentencing to underemphasize rehabilitation or with proper reasons to completely set it aside.").)

The fact that the court did not mouth the word "rehabilitation" does not mean that it failed to consider it. (Robinson's Br. 20.) The court simply did not give Robinson's

uncertain potential for rehabilitation much weight—the same as it did not give his positive attributes and "mixed bag" character decisive weight—against the seriousness of these crimes, the need to protect the public, the need to deter others, and the need to punish Robinson.

### E. The trial court properly imposed consecutive sentences for crimes that took two young lives.

Robinson complains that consecutive sentences for the two counts of hit and run causing death were not justified because he committed only one act. (Robinson's Br. 24–28.) "But in this case, there are not three separate acts. Mr. Robinson went through an intersection on a green light after passing a stopped car, hit the victims in this case, and did not stay at the scene. This was not three separate incidents. It was an accident and a poor decision by a 19-year-old to leave the scene." (R. 71:4.) Robinson complains further that the trial court did not explain why it chose consecutive rather than concurrent sentences. (Robinson's Br. at 24–28.) Judge Brostrom rejected Robinson's claim that Judge Protasiewicz failed to justify the imposition of consecutive sentences. (R. 133:4.)

It is black letter law that multiple punishments are permitted when there are multiple victims of one act. *State v. Pal*, 2017 WI 44, ¶¶ 20–22, 38, 374 Wis. 2d 759, 893 N.W.2d 848; *State v. Wise*, 2021 WI App 87, ¶ 31, 400 Wis. 2d 174, 968 N.W.2d 705.

The trial court has "wide discretion" in deciding whether to impose consecutive sentences. *Davis*, 281 Wis. 2d 118, ¶ 27; *see* Wis. Stat. § 973.15(2)(a). The trial court properly exercises its discretion when imposing consecutive sentences by considering the same factors it applies when determining the overall length of the sentence. *State v. Berggren*, 2009 WI App 82, ¶ 46, 320 Wis. 2d 209, 769 N.W.2d 110.

The court confirmed at the outset that the State was recommending consecutive prison sentences on all three counts with "a substantial amount of initial confinement," as permitted by the plea agreement. (R. 98:6.) Robinson argued against consecutive sentences. (R. 71:2–4; 98:50–51.) The court agreed with the State that consecutive sentences were justified. The trial court properly weighed the factors that supported consecutive sentences against those that did not. As Judge Brostrom aptly put it in her decision denying resentencing: "Moreover, additional justification for separate punishment is *obvious*. Two child victims were killed. Two homicide victims support the imposition of two, distinct sentences." (R. 133:4.) Had the court imposed concurrent sentences here, as if there were only one victim, it would have effectively erased Robinson's culpability for taking the second child's life.

Finally, the court plainly intended to impose a total sentence of twenty years of initial confinement followed by ten years of extended supervision for the three counts. The court, therefore, could have for the same reasons imposed *concurrent* sentences totaling fifteen years of initial confinement followed by ten years of extended supervision for the two homicide counts, and a consecutive sentence of five years of initial confinement and five years of extended supervision for the great bodily harm count. (R. 63:1.) That would not have been a better outcome for Robinson.

### F. The trial court properly weighed the interest in deterring others from driving recklessly.

Robinson complains that the trial court gave significant weight to the interest in deterring reckless driving. (Robinson's Br. 28–32.) Robinson insists that he did nothing wrong other than flee the scene. He emphasizes that he was

convicted only of hit and run causing death and great bodily harm, not reckless driving. (Robinson's Br. 29–30.)

Judge Brostrom properly rejected Robinson's claim that Judge Protasiewicz should not have considered deterrence of reckless driving because he was not convicted of crimes requiring proof of recklessness. (R. 133:5.) Judge Brostrom explained why that argument is nonsense:

> Rather, the court's description of the defendant's conduct as "reckless" was supported by the read-in offenses as well as the court's review of the video of the incident, which was done on-the-record at the sentencing hearing:
>
> "I watched the way you were operating your motor vehicle. It was reckless and you weren't licensed."
>
> (*Id*. at 70). The court finds no abuse of discretion from Judge Protasiewicz's characterization of the defendant's driving, which was based on her own review of the video, or her consideration of the various sentencing factors, which included deterrence.

(R. 133:5.)

Robinson simply ignores the two reckless homicide counts and one reckless injury count, as well as the three counts of operating without a license causing injury and death, that were dismissed *but read into the record for sentencing purposes* as part of the plea agreement with the State.

When he pled guilty, Robinson assured the court that he understood the impact the read-in counts could have on his sentence:

> THE COURT: So, sir, you understand that you are pleading guilty to three counts out of ten [sic]; the remaining counts are going to be dismissed and read in; do you understand that?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And those counts that are dismissed and read in are still really important

> because I'm going to consider those counts when I sentence you on the three counts that you're actually pleading guilty to; do you understand that?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: So your exposure, should I say, the amount of time that you could be sentenced to, isn't going to be increased; *but I'll be considering all the facts and circumstances related to your case, including those dismissed and read in counts*; do you understand that, sir?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Do you have any questions about that?
>
> THE DEFENDANT: No, Your Honor.

(R. 86:6 (emphasis added).)

The court properly considered the facts underlying all six read-in counts when imposing sentence on the three hit-and-run counts to which Robinson pled guilty. *State v. Sulla*, 2016 WI 46, ¶¶ 32–33, 369 Wis. 2d 225, 880 N.W.2d 659; *State v. Frey*, 2012 WI 99, ¶¶ 69–74, 343 Wis. 2d 358, 817 N.W.2d 436.

The trial court properly relied on the facts underlying the three reckless conduct read-in counts as alleged in the "probable cause" section of the complaint (R. 2:3–6; 86:14–15), and as shown in the detective's video of the crash (R. 98:7), when it labeled Robinson's driving what it truly was—reckless—because he "blew around" the stopped traffic at a high rate of speed (R. 98:68–69, 71–73).

The court also properly relied on the three read-in counts of operating without a license when it labeled Robinson's reckless conduct what it truly was—aggravated—because he should not have been on the road at all. (R. 98:69–70, 73.) Had the unlicensed Robinson not been on the road, the two deceased children would be alive today

and the third child would be leading a normal life unencumbered by serious injury.

***

Robinson's sentence, less than one-half of the 65-year statutory maximum for the three offenses to which he pled, and less than one-seventh of the 225-year maximum for the initial nine charges, did not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). What justifiably shocked the public was Robinson's aggravated criminal conduct that produced such unspeakable consequences for all to see on the video viewed by the trial court and the public at sentencing.

## CONCLUSION

The trial court properly exercised its sentencing discretion. This Court should affirm the judgment and order.

Dated this 20th day of December 2023.

Respectfully submitted,

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## 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 5,942 words.

Dated this 20th day of December 2023.

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## 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 Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 20th day of December 2023.

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