

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP175-CR

Cir. Ct. No. 2016CF112

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER S. STEVENS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed.*

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Christopher S. Stevens appeals from a judgment convicting him of first-degree reckless homicide on his no contest plea and from an order denying his postconviction motion challenging his sentence. We affirm because the circuit court did not rely upon inaccurate information at sentencing, and Stevens did not show the existence of a new factor warranting sentence modification. We also conclude that Stevens did not satisfy the criteria for obtaining postconviction discovery of matters relating to his challenge to his sentence.

¶2 The victim died as a result of ingesting drugs supplied by Stevens. Pursuant to Stevens's plea agreement, the State recommended no more than a ten-year sentence (five years of initial confinement and five years of extended supervision). The circuit court imposed a fifteen-year sentence (seven years of initial confinement and eight years of extended supervision). Stevens challenges his sentence.

¶3 During sentencing, the circuit court asked for more information about the extent of Stevens's cooperation with law enforcement. The State directed the circuit court to the presentence investigation report which stated that Stevens worked with a drug unit to buy drugs from his drug dealer.¹ The court wanted to know about the results of Stevens's cooperation with the drug unit and

¹ Stevens did not argue that this information was either inaccurate or incomplete. Stevens did not highlight any other aspects of what he claims was cooperation with law enforcement.

whether Stevens's dealer was more like Stevens² or was a larger actor (a "bigger fish") in drug distribution. The State was unable to provide that information.

¶4 In its sentencing remarks, the State characterized Stevens as a drug dealer with a lengthy juvenile and adult offense history. The presentence investigation report suggested that Stevens minimized his behavior and his involvement in the victim's death. Stevens's counsel argued that Stevens did not intend for the victim to die, he sold drugs to support his habit which was less aggravated than selling drugs to make money, Stevens has substance abuse issues for which he had received some treatment, Stevens cooperated with law enforcement, and Stevens did not minimize his culpability in the victim's death. During allocution, Stevens expressed remorse that his actions caused the victim's death.

¶5 In its sentencing remarks, the circuit court considered the severity of the offense, Stevens's rehabilitative needs, and the need to protect the public. The court deemed the offense very severe. Stevens regularly dealt heroin and brought drugs into the community, and he provided the drugs that the victim ingested leading to her death. The court deemed very aggravated Stevens's lengthy offense history and noted that he had previously failed on supervision. The court considered Stevens's character and did not find Stevens's expression of remorse entirely credible. The court observed that Stevens considered himself a victim. The court considered that the public needed to be protected because Stevens's prior correctional experiences had not changed his behavior, and the public

² Stevens claimed that he was only dealing drugs to support his habit rather than as a means of financial support.

remained endangered by his drug dealing. The circuit court imposed a fifteen-year sentence (seven years of initial confinement and eight years of extended supervision).

¶6 Postconviction, Stevens asserted two challenges to his sentence. First, the circuit court sentenced him based on inaccurate information about the extent of his cooperation with law enforcement, and the State misled the court by not providing accurate information about the extent of his cooperation. Second, Stevens argued that the lack of information about his cooperation constituted a new factor. In a separate claim, Stevens sought postconviction discovery of materials he claimed would show the extent of his cooperation with law enforcement.

¶7 At the postconviction motion hearing, the State advised that no charges were ever filed against Stevens's drug supplier.³ The circuit court stated that Stevens's cooperation in an investigation against his supplier "wasn't going to be sufficient for this Court to consider as a mitigating factor for lessening the sentence anymore than it was." The court deemed the plea agreement's sentencing recommendation insufficient under the circumstances of the case. The court found no basis to modify the sentence or to determine that Stevens had shown the existence of a new factor because the court was aware at the time of sentencing that Stevens had assisted law enforcement. The court reiterated that its focus at sentencing was on the severity of the offense and Stevens's significant prior record, and his cooperation was not enough to outweigh these factors.

³ The postconviction motion hearing occurred approximately fourteen months after Stevens's sentencing.

¶8 On appeal, Stevens argues that he should be resentenced because he was sentenced on the basis of inaccurate information or otherwise demonstrated a new factor. A defendant has a “due process right to be sentenced upon accurate information.” *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. To obtain resentencing, a defendant must establish by clear and convincing evidence that the information was inaccurate and the court actually relied upon it. *Id.*, ¶28. Whether the circuit court relied upon inaccurate information at sentencing presents a question of law we decide independently of the circuit court. *See id.*, ¶9. Stevens also bore the burden to establish a new factor. *State v. Harbor*, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828. Stevens had to show “facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.” *Id.*, ¶¶40, 52.

¶9 With regard to both avenues for relief from the sentence, the record demonstrates that the issue of Stevens’s cooperation with law enforcement was before the circuit court at sentencing. The presentence investigation report refers to Stevens’s participation in a controlled drug buy with his supplier, and the State directed the circuit court’s attention to that information. Stevens contends that he assisted in the arrest of a “bigger fish,” the details of his cooperation were within police reports in the possession of the State, and this information should have been provided to the circuit court at sentencing. However, the circuit court was aware of the relationship between Stevens and his drug supplier, and the State did not misrepresent the extent of Stevens’s cooperation: the parties agreed that Stevens participated in a controlled drug buy.

¶10 The weight of the various sentencing factors was within the circuit court's discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. The court placed greater weight on the severity of the offense, Stevens's extensive prior offense history, and the need to protect the public than it did on Stevens's participation in a drug buy involving his drug supplier. There is no basis to modify Stevens's sentence due to either inaccurate information or a new factor.

¶11 Stevens's final appellate issue arises from his request for postconviction discovery relating to his cooperation with law enforcement. Whether to grant postconviction discovery was discretionary with the circuit court. *State v. Ziebart*, 2003 WI App 258, ¶32, 268 Wis. 2d 468, 673 N.W.2d 369. Stevens had to demonstrate that the sentencing outcome would have been different if he had had access to this information. *Id.*

¶12 We have held that Stevens was not sentenced based on inaccurate information and that he did not show the existence of a new factor because the circuit court was aware at sentencing of Stevens's cooperation with law enforcement. Postconviction discovery is only available if a defendant establishes that "the desired evidence is relevant to an issue of consequence." *Id.* The record confirms that Stevens's cooperation was not relevant to a challenge to his sentence and more information about his cooperation would not have changed his sentence. The circuit court did not err in denying postconviction discovery.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2017-18).

