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DISTRICT II

March 4, 2026

To:

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Circuit Court Judge
Electronic Notice

Jonathan D. Gunderson
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Donald V. Latorraca
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP1754-CR

State of Wisconsin v. Jesus Francisco Ramirez (L.C. #2018CF667)

Before Gundrum, Grogan, and Lazar, JJ.

Summary disposition orders 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).

Jesus Francisco Ramirez appeals from a judgment of conviction and an order of the circuit court denying his motion for postconviction relief. Ramirez asserts the court erred by relying on inaccurate information in imposing sentence after revocation and that this error was not harmless. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ For the following reasons, we affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

The State charged Ramirez with two counts of misdemeanor battery, both as a repeater and with a domestic abuse enhancer (counts one and two), disorderly conduct as a repeater with a domestic abuse enhancer (count three), obstructing an officer as a repeater (count four), and possession of THC as a second or subsequent offense, also as a repeater (count five).² Ramirez entered no contest pleas to counts one, three, and five, and counts two and four were dismissed and read in at sentencing, which occurred in January 2020. The circuit court withheld sentence and placed Ramirez on probation for three years as to each count, and it ordered Ramirez to serve nine months in county jail as a condition of probation.

In June 2022,³ the Department of Corrections (DOC) revoked Ramirez's probation following a revocation hearing before an administrative law judge (ALJ). The DOC initially sought revocation based on seven alleged violations that included marijuana use, failure to report to his agent, and conduct stemming from a sexual relationship with a minor, which included allegations of physical and sexual assault and that Ramirez possessed sexually explicit videos of her. However, the ALJ concluded that while the DOC had established that Ramirez violated his rules of supervision by consuming marijuana and by failing to report to his agent, it had otherwise failed to prove the allegations regarding Ramirez's relationship and conduct with the minor. The ALJ's decision was not included in the sentencing after revocation packet provided to the circuit court for sentencing.

² See WIS. STAT. §§ 940.19(1) (2017-18), 939.62(1)(a), and 968.075(1)(a) (counts one and two); WIS. STAT. §§ 947.01(1), 939.62(1)(a), and 968.075(1)(a) (count three); WIS. STAT. §§ 946.41(1) and 939.62(1)(a) (count four); and WIS. STAT. §§ 961.41(3g)(e) and 939.62(1)(b) (count five).

³ The ALJ's May 4, 2022 Decision and Order ordered revocation of Ramirez's probation. The Division of Hearing and Appeals Administrator signed the Revocation Order and Warrant on June 1, 2022, the effective date of Ramirez's revocation.

At the post-revocation sentencing hearing, defense counsel correctly noted that Ramirez had a “pending case” regarding the sexual assault allegations involving the minor female but erroneously asserted that Ramirez “was revoked based on” those “egregious and serious” assault allegations. This erroneous statement was not corrected during the course of the hearing.

In imposing sentence, the circuit court considered “the three primary [sentencing] factors: the gravity of the offense, the character of the offender, and the need to protect the public.” See *State v. Rodgers*, 203 Wis. 2d 83, 93, 552 N.W.2d 123 (Ct. App. 1996). First, the court determined that the nature and gravity of the offenses “weigh[ed] against” Ramirez. Specifically, it noted that counts one and three, the battery and disorderly conduct charges, although misdemeanors, both carried enhancers making them “more on par with a low-level felony or ... something in between a misdemeanor and felony” and that count five, the THC charge, was “like a mid-level felony” given that it, too, carried an enhancer.

Next, in considering the need to protect the community, the circuit court acknowledged Ramirez had “made some strides while ... under supervision,” and it also referenced the positive character reference letters submitted on his behalf. The court went on to state, however, that it could not “overlook the reason [he was] revoked and, you know, [his] age as opposed to the age of this young woman here, who [he was] involved with and having sexual intercourse with[.]” It then recounted the victim’s allegations that Ramirez “told her to kill her baby and herself, that she was pushed down on the bed and choked, that he slapped her on the right side of the face[.]” and that Ramirez was recorded in jail calls having “extremely graphic sexual talks with this very young victim ... where he acknowledged that she was underage, [and] where he talked to her about sexual dreams that he had about her.”

Turning to the COMPAS⁴ evaluation, the circuit court explained it “showed an eight of ten on [the] general recidivism rate and a ten out of ten in [the] violent recidivism rate[,]” which the court said “really d[id]n’t tell [it] anything [it] didn’t know intuitively given these new charges.”⁵ Based on all of this information, the court called Ramirez a “predator” and “an extremely dangerous person[.]” This, it said, “weigh[ed] heavily against” Ramirez in regard to the need to protect the community. The court also recounted the charges Ramirez was being sentenced for—battery, disorderly conduct, and possession of THC, all of which included repeater enhancers and a domestic abuse enhancer for all but the TCH charge—and stated that those “charges alone ... tell me that you’re a violent person.”

Finally, in regard to Ramirez’s character, the circuit court indicated that “the fact that [he was] involved in this relationship with this 14-year-old girl speaks volumes about [his] character, and it’s something that is extremely upsetting to the Court.” Taking all of these factors into consideration, the court sentenced Ramirez to three consecutive sentences, which resulted in a total of six years of initial confinement and four years of extended supervision.

Ramirez thereafter filed a postconviction motion requesting that the circuit court enter “an order vacating his sentence and ordering a new sentencing hearing because of inaccurate information presented” at the post-revocation sentencing hearing. Specifically, Ramirez asserted “the [c]ourt relied on defense counsel’s inaccurate statements that the DOC revoked Ramirez’s probation because of the ‘egregious’ assault allegations.” He argued that because “the [c]ourt

⁴ “‘COMPAS’ stands for ‘Correctional Offender Management Profiling for Alternative Sanctions.’” See *State v. Loomis*, 2016 WI 68, ¶4 n.10, 371 Wis. 2d 235, 881 N.W.2d 749.

⁵ Presumably, the “new charges” referred to the charges related to the conduct underlying the sexual assault allegations set forth in the DOC’s revocation documents.

emphasized facts tied to those allegations in explaining its sentence[,]” “counsel’s inaccurate information ... contribute[d] to the ultimate sentence.”

The postconviction court held a hearing on the motion at which the State conceded “there may have been an error in the assertion that [Ramirez] was revoked because of the new case[.]” The State argued, however, that despite that misunderstanding or misstatement, the court could properly rely on information related to the new case in assessing Ramirez’s character at sentencing. The court expressed it was “unfortunate” defense counsel had stated Ramirez “was revoked because of the sexual assault allegations regarding [the] young juvenile female” and recounted it had “at one point ... parroted that[.]” However, the court noted Ramirez did not “seem to dispute the [alleged] conduct[,]” and that even if he had, “there’s some case law that holds that the Court can consider disputed allegations at a sentencing after revocation anyway.” It also explained “it would not have made a difference” at the sentencing hearing had the ALJ’s decision been before it at the time “because ... [w]hat matters is that [Ramirez] was revoked, and what matters is the conduct that’s alleged.” Accordingly, the court rejected Ramirez’s assertion it had “rel[ied] on the inaccurate information that he was revoked because of the sexual assault allegations” and denied Ramirez’s motion. Ramirez appeals.

“A defendant has a constitutionally protected due process right to be sentenced upon accurate information[,]” and we review “[w]hether a defendant has been denied this due process right” independently. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. If a defendant’s sentence was based upon inaccurate information, he may request resentencing. *See id.*, ¶26. To obtain a new sentence, a defendant “must show by clear and convincing evidence that: (1) some information at the original sentencing was inaccurate, and (2) the circuit court actually relied on the inaccurate information at sentencing.” *State v. Coffee*, 2020 WI 1, ¶38,

389 Wis. 2d 627, 937 N.W.2d 579. “Whether the court ‘actually relied’ on the incorrect information” depends upon whether it “gave ‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *Tiepelman*, 291 Wis. 2d 179, ¶14 (citation omitted). “Once actual reliance on inaccurate information is shown, the burden then shifts to the [S]tate to prove the error was harmless.” *Id.*, ¶26. Whether an error is harmless is a question of law we review independently. *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423; *Coffee*, 389 Wis. 2d 627, ¶17.

Ramirez contends his attorney’s erroneous statement at sentencing—that he was revoked *based on* the sexual assault allegations—coupled with the circuit court’s comment that it could not “overlook the reason you were revoked” and its emphasis on the conduct underlying the sexual assault allegations, establish that it improperly relied on inaccurate information and that he is therefore entitled to resentencing. We disagree.

From our review of the Record, it is clear the circuit court did not rely on the *inaccurate statement* that Ramirez was revoked “based on” the sexual assault allegations in imposing sentence. Rather, what the court emphasized and relied on in regard to those allegations was the *underlying conduct*—such as the victim’s allegation that Ramirez “told her to kill her baby and herself” and Ramirez’s sexually explicit phone calls with the victim while in jail—which not only did Ramirez not dispute (nor does he now), but which also formed the basis of the pending charges in the case counsel referenced at the post-revocation sentencing hearing and of which the court itself was already aware. The court was also careful to recognize Ramirez had not yet been adjudicated guilty of any crimes related to this conduct: “I understand that you’re facing charges with [the assault allegations] and those will be resolved in Branch 5. And I’m not talking about guilt or innocence, I’m talking about recorded phone calls[.]” What the court did *not* do,

however, was give “‘explicit attention’ or ‘specific consideration’” to defense counsel’s erroneous statement as to the basis for Ramirez’s revocation. See *Tiepelman*, 291 Wis. 2d 179, ¶14.

Relying on the underlying conduct itself in imposing sentence, even if Ramirez was not revoked based on that conduct, was not improper because a sentencing court “may consider evidence of unproven offenses as part of its determination of the defendant’s character and need for incarceration and rehabilitation.” See *State v. Verstoppen*, 185 Wis. 2d 728, 737, 519 N.W.2d 653 (Ct. App. 1994); *State v. Leitner*, 2002 WI 77, ¶45, 253 Wis. 2d 449, 646 N.W.2d 341 (“A sentencing court may consider uncharged and unproven offenses and facts related to offenses for which the defendant has been acquitted.” (footnote omitted)). Thus, the court was plainly permitted to consider this evidence in assessing Ramirez’s character. And, as summarized above, it is clear the court did not *only* rely on the alleged conduct stemming from the sexual assault allegations but rather that it also gave specific consideration to the conduct related to the charges for which Ramirez was being sentenced, stating specifically that those charges alone indicate that Ramirez is “a violent person.”

While Ramirez has established there was inaccurate information—that he was revoked *based on* allegations of sexual assault with a minor—before the circuit court at sentencing, he has failed to establish that the court relied on that inaccurate statement in imposing sentence. See *Tiepelman*, 291 Wis. 2d 179, ¶2. Consequently, the postconviction court did not err in denying his motion for resentencing.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals