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DISTRICT I

March 24, 2026

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

2024AP2109-CR State of Wisconsin v. Tyree-Johnathan R. Townsend
(L.C. # 2019CF4750)

Before White, C.J., Colón, P.J., and Donald, J.

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).

Tyree-Johnathan R. Townsend appeals from a judgment entered after a jury found him guilty of felony murder. He also appeals from a postconviction order that denied his claims for resentencing but granted his request for sentence modification. He asserts that the circuit court wrongly denied resentencing and then relied on improper factors when it modified his sentence. He asks this court either to remand for resentencing by the circuit court or to reduce his modified term of imprisonment as this court sees fit. Based upon a 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 We summarily affirm.

The State alleged in a criminal complaint that Townsend and his brother robbed a woman in her home and that Townsend's brother shot and killed the woman while the robbery was underway. Townsend and his brother were recorded on video the day after the incident selling items at a pawnshop. Police arrested Townsend, and he gave a custodial statement. The statement included admissions that Townsend watched his brother shoot the victim, that Townsend did not try to prevent the shooting, and that the brothers then went through the victim's house and took various items. Townsend also twice explained his actions by stating that he could not "let [his] brother do it by himself." The State charged Townsend with felony murder with armed robbery as the predicate offense.

The matter proceeded to a jury trial at which Townsend testified on his own behalf. He told the jury that he had accompanied his brother to the victim's home believing that his brother planned to ask the victim if she had any odd jobs that they could do for her. He said that after the victim let them into her home, he went to the bathroom and during that time his brother shot the victim. After Townsend returned from the bathroom, his brother shot the victim again and then ordered Townsend to assist in removing items from the home. Townsend acknowledged going to a pawnshop with his brother the next day, but Townsend testified that he was "just there" while his brother pawned the victim's TV. The jury found Townsend guilty as charged.

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

At sentencing, the circuit court noted that Townsend had a right to take his case to trial but found that he had lied on the stand and showed no remorse:

Mr. Townsend, you took the stand, you lied through your teeth, you made up utter garbage.... You and your brother showed no remorse.

You both had a right to a trial, fine.^[2] But in your case you took the stand after you had confessed to everything to a police officer and tried to convince a jury that, no, that confession was all wrong....

[The jury] did not believe any of your lies. Everything you said on the stand was made up, it was preposterous, it was ridiculous.... You of course, have a right to a trial. You exercised your right to a trial, but the jury couldn't understand why you took it to trial, and I couldn't give them an explanation....

I don't believe for a minute you were upstairs or in the bathroom or anything[.] [Y]ou stood by and watched ... your brother stand over her and execute that woman.

The circuit court also found that the video of Townsend at the pawnshop showed him “yu[kk]ing it up,” “laughing,” and the circuit court reiterated its conclusion that he showed “no remorse.”

The circuit court ultimately imposed a 40-year term of imprisonment bifurcated as 30 years of initial confinement and 10 years of extended supervision.

Townsend filed a postconviction motion “for sentence modification or for a resentencing.” Regarding the claim for sentence modification, he contended that the circuit court “was unaware at the time of sentencing that Townsend had showed genuine remorse,” and in support he presented a video recording of himself alone in an interrogation room, crying after giving his inculpatory statement to police. As an alternative to sentence modification, Townsend

² The record reflects that Townsend's brother was tried separately and convicted of first-degree intentional homicide before Townsend's trial began.

asked for resentencing on two grounds: (1) the circuit court relied on inaccurate information that he showed no remorse; and (2) the circuit court punished him for exercising his rights to have a trial and to testify.

The circuit court entered an interim order making findings and addressing some of the issues that Townsend presented. The circuit court found that at the time of the sentencing proceedings, it was unaware of the video showing Townsend crying after his interrogation and therefore believed that Townsend was remorseless “without ... knowledge of the video footage.” The circuit court concluded that the video footage was a new factor and that a hearing was required to determine the extent of the sentence modification warranted.³

The circuit court then considered and denied Townsend’s claims for resentencing. The circuit court began by rejecting the arguments that were based on its alleged reliance on inaccurate information that Townsend lacked remorse. The circuit court concluded that because Townsend sought alternative remedies based on the same allegations about his remorse, the decision to grant sentence modification disposed of the alternative request for resentencing. The circuit court also rejected Townsend’s arguments that he was entitled to resentencing because the circuit court had punished him for exercising his rights to a trial and to testify. The circuit court found that it had explicitly acknowledged those rights and had not penalized Townsend for exercising them. Rather, the circuit court determined that it had fashioned Townsend’s sentence

³ A circuit court has discretion to modify a sentence upon proof of a new factor. *State v. Harbor*, 2011 WI 28, ¶37, 333 Wis. 2d 53, 797 N.W.2d 828. “[T]o prevail, the defendant must demonstrate both the existence of a new factor and that the new factor justifies modification of the sentence.” *Id.*, ¶38.

in light of a variety of factors, including his “lack of candor to the court, and to the oath he swore to tell the truth, when he lied on the stand during his testimony.”

The matter proceeded to a postconviction hearing on Townsend’s claim for sentence modification. At the hearing, the circuit court heard argument from the parties and took testimony from the victim’s family. Townsend also spoke on his own behalf. His statements included an admission that he “did go to trial and lie, and [he] wrongly did that.” However, Townsend assured the circuit court that the tears he shed after giving his custodial statement stemmed from his genuine remorse for his actions.

The circuit court ruled from the bench and found that “there was some remorse” reflected in the video recording. However, the circuit court observed:

[W]hen someone goes to trial, you don’t then get the benefits of saying, well, I pled guilty, I accepted responsibility, I’m either truly remorseful or at least saying I’m remorseful. I’m not putting the victim’s family through it. I’m not putting the State through it. I’m not going to waste the court’s time and the jury’s time and everybody’s time. That’s not what happened here.

The circuit court then concluded that “modest” relief was warranted and modified Townsend’s term of imprisonment by reducing each component of the bifurcated sentence by 2 years, resulting in 28 years of initial confinement and 8 years of extended supervision.

Townsend appeals. He argues that he is entitled to resentencing because: (1) the circuit court originally sentenced him in reliance on inaccurate information that he lacked remorse; (2) the circuit court originally sentenced him in reliance on the improper factors that he exercised his right to a trial and to testify; and (3) the circuit court modified his sentence in reliance on the improper factors that he exercised his rights to a trial and to testify. As an alternative to

remanding for resentencing by the circuit court, he asks this court to modify his sentence as we see fit.

We first address the claim that Townsend is entitled to resentencing because the circuit court originally sentenced him in reliance on inaccurate information about his remorse. The circuit court properly rejected this claim. Townsend’s postconviction motion requested either of two forms of relief—sentence modification or resentencing—based on the sentencing court’s unfamiliarity with video evidence that suggested his remorse.⁴ The circuit court granted sentence modification and entered a written order declining to consider Townsend’s request for an alternative remedy based on the same facts, explaining that “cases should be decided on the narrowest possible ground[.]” *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989). We agree.

Moreover, subsequent proceedings reflect that further review of the circuit court’s decision is unwarranted. After the circuit court entered its written order denying resentencing, the circuit court conducted a hearing on the claim for sentence modification based on new information about Townsend’s remorse. At the outset of that hearing, the circuit court invited Townsend to present any additional argument that he might wish to offer. Townsend’s argument did not mention his alternative request for resentencing, nor did he oppose proceeding with the sentence modification hearing. Accordingly, he forfeited any claim that he should receive a different remedy based on allegations about his remorse. *See Farrar v. State*, 52 Wis. 2d 651,

⁴ Sentence modification and resentencing are “distinctly different concepts.” *State v. Wood*, 2007 WI App 190, ¶9, 305 Wis. 2d 133, 738 N.W.2d 81. Sentence modification corrects “specific problems” in an existing sentence and is available to address an alleged new factor, but “[w]hen a resentencing is required for any reason, the initial sentence is a nullity, it ceases to exist.” *Id.*, ¶¶6, 9 (citation omitted).

660-61, 191 N.W.2d 214 (1971) (holding that a defendant cannot proceed down the road to sentencing and then, if the road proves steeper than he hoped, “retrace his steps and walk down the road he earlier chose not to traverse”); *see also State v. Ruud*, 41 Wis. 2d 720, 726, 165 N.W.2d 153 (1969) (holding that an election between courses of action estops the defendant from claiming error).

Townsend next claims that he is entitled to resentencing because the circuit court relied on improper factors when imposing his original sentence. Specifically, he asserts that the circuit court wrongly punished him for exercising his rights to a jury trial and to testify.

“We review a circuit court’s sentencing decision for an erroneous exercise of discretion.” *State v. Dodson*, 2022 WI 5, ¶8, 400 Wis. 2d 313, 969 N.W.2d 225. A circuit court erroneously exercises its sentencing discretion when the circuit court “actually relies on clearly irrelevant or improper factors.” *Id.* (citation omitted). A defendant challenging the exercise of sentencing discretion on this basis “must prove by clear and convincing evidence that: (1) the challenged factor is irrelevant or improper; and (2) the circuit court actually relied on that factor.” *Id.*

As to the first prong of the analysis, no dispute exists that a criminal defendant has the constitutional rights to a trial and to testify, *State v. Brown*, 2006 WI 100, ¶14, 293 Wis. 2d 594, 716 N.W.2d 906, and may not be punished solely for exercising those rights, *State v. Williams*, 2018 WI 59, ¶51, 381 Wis. 2d 661, 912 N.W.2d 373. As to the second prong, however, Townsend failed to show that the circuit court relied on improper factors when imposing his original sentence.

The circuit court stated at several points in its original sentencing remarks that Townsend had a right to a trial, but the circuit court found that Townsend made the choice to “lie[] on the

stand during his testimony,” and the circuit court considered that choice when fashioning Townsend’s sentence. Doing so was entirely proper. “When determining a sentence, the sentencing court has the authority to evaluate a defendant’s testimony, determine if it contained ‘willful and material falsehoods,’ and assess it in light of all other knowledge gained about the defendant.” *State v. Gribble*, 2001 WI App 227, ¶66, 248 Wis. 2d 409, 636 N.W.2d 488 (citation omitted); *see also Lange v. State*, 54 Wis. 2d 569, 575, 196 N.W.2d 680 (1972) (“[T]he trial judge’s appraisal of a defendant’s attitude, including the evidence of his veracity at trial is highly relevant to the exercise of sentencing discretion.”). Accordingly, the circuit court did not err by considering these matters when sentencing Townsend.

Next, Townsend asserts that he is entitled to resentencing because, when modifying his sentence, the circuit court “again improperly considered Townsend’s decision to have a trial and testify.” In support, Townsend quotes the circuit court’s remarks during the sentence modification hearing, where the circuit court noted the leniency sometimes afforded to defendants who plead guilty and do not “waste the court’s time” with a trial. He shows no error.

As our supreme court explained long ago, “[i]t does not necessarily follow ... that where a judge makes reference to a guilty plea as a consideration in granting a lesser sentence, he is actually punishing a defendant who stands trial.” *Drinkwater v. State*, 73 Wis. 2d 674, 681, 245 N.W.2d 664 (1976). Further, “the interposition of a frivolous defense showing lack of good faith forcing a trial and unreasonably burdening a court is properly a matter to be considered in ... determining the length of a sentence.” *Lange*, 54 Wis. 2d at 576 (citation omitted). Here, Townsend challenges remarks reflecting the circuit court’s conclusion that, while his display of remorse weighed in his favor, his decision to lie at trial—a decision that he admitted in open court—was a countervailing factor that resulted in less leniency than might be afforded to a

defendant who was cooperative and considerate of the victim's family, the jury, and the court. As *Drinkwater* and *Lange* make clear, the circuit court could properly consider this aspect of the case when modifying Townsend's sentence.

Moreover, the record shows that during both the original sentencing and at the modification hearing, the circuit court considered a host of factors, including the primary sentencing factors of "the gravity of the offense, the defendant's character, and the need to protect the public." See *Dodson*, 400 Wis. 2d 313, ¶9. Regarding the gravity of the offense, the circuit court found that Townsend took the life of a relatively young woman and caused "carnage and damage" to her family. Regarding Townsend's character, the circuit court noted that Townsend did not try to stop his brother from carrying out the armed robbery and accompanying homicide, and the circuit court also emphasized Townsend's callous behavior at the pawnshop. Regarding the need to protect the public, the circuit court found that Townsend's conduct indicated that he was at risk to reoffend. These are all appropriate factors that the circuit court could properly consider in conjunction with its assessment of Townsend's false testimony at trial. See *Gribble*, 248 Wis. 2d 409, ¶66. Accordingly, we reject Townsend's claim for resentencing based on the circuit court's remarks when modifying his sentence.

Last, Townsend contends that if we reject his claims for resentencing, then we should ourselves modify his sentence to a more lenient term. Sentencing decisions, however, rest within the circuit court's discretion. *Id.*, ¶64. Sentence modification by this court is therefore unavailable. "The court of appeals may not exercise discretion properly left to the [circuit] court." *State v. Beloit Concrete Stone Co.*, 103 Wis. 2d 506, 514, 309 N.W.2d 28 (Ct. App. 1981). Townsend nonetheless asserts that we may modify his sentence, directing our attention to a case describing the power of the Wisconsin Supreme Court when reviewing a sentencing

decision. Our authority, however, is not identical to that of the Wisconsin Supreme Court. We are an error-correcting court, *State v. Schumacher*, 144 Wis. 2d 388, 407, 424 N.W.2d 672 (1988), and we are not equipped or authorized to make the factual findings required to exercise sentencing discretion, *see Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 & n.3, 293 N.W.2d 155 (1980).

Therefore,

IT IS ORDERED that the judgment of conviction and postconviction order 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