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**DISTRICT I**

May 5, 2026

To:

Hon. David L. Borowski  
Circuit Court Judge  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Hon. David C. Swanson  
Circuit Court Judge  
Electronic Notice

Hector Salim Al-Homsi  
Electronic Notice

George Tauscheck  
Electronic Notice

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

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2024AP1297-CR      State of Wisconsin v. Lluvianna Estrella Cruz  
(L.C. # 2020CF4073)

Before Colón, P.J., Donald, and Geenen, 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).**

Lluvianna Estrella Cruz appeals from a judgment convicting her of felony murder as a party to a crime and possession of a firearm as a felon. She also appeals from an order denying her postconviction motion.<sup>1</sup> Based upon our review of the briefs and record, we conclude at

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<sup>1</sup> The Honorable David L. Borowski presided over Cruz's trial and sentenced her. The Honorable David C. Swanson issued the order denying Cruz's postconviction motion. For ease of reference, we refer to both as the circuit court.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>2</sup> We affirm.

### ***Background***

Seventeen-year-old Bradley Grabner was shot in the neck and killed during the course of an armed robbery carried out by Cruz and two others. According to the complaint, Cruz asked JJB for a ride home from a party.<sup>3</sup> JJB agreed. Grabner and two of Cruz's co-actors—Kiddchosen Cvikel and an unnamed minor—joined them in the car. JJB was in the driver's seat, Cruz was in the front passenger seat, and the other three were in the rear seats. Shortly after JJB started driving, Cruz and Cvikel pulled out guns and yelled at JJB and Grabner to give them all their money. The minor beat Grabner while this was happening. The apparent motive was to rob Grabner, who was believed to possess a substantial amount of money from drug-related activities. Cvikel's firearm discharged accidentally, resulting in Grabner's death. Cruz and her co-actors dumped the body in an alley and fled.

The case proceeded to trial. A jury convicted Cruz of felony murder as a party to the crime with armed robbery as the predicate offense and possession of a firearm as a felon.

Given that Cruz's appellate challenges relate to her sentencing, we focus much of our attention on the sentencing hearing. At the hearing, Grabner's family members made statements.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

<sup>3</sup> For consistency, we identify JJB in the same way that he is identified in the complaint.

Grabner's grandmother said that Cruz and her accomplices "destroyed [her family's] lives" and took her son's only child from her in a "violent and senseless way." She observed that her grandson did not deserve to be killed and "thrown out like garbage." Grabner's grandmother further stated that there was "no ownership [or] responsibility taken thereafter to help him" and that there had been "no remorse[.]"

Grabner's grandfather, during his sentencing remarks, claimed Cruz had a teardrop tattoo on her face, which he said signified that she killed someone, and that, through the tattoo, she was bragging. He also claimed that "[s]he and her attorney ha[d] manipulated the system to avoid her trial," which prolonged the suffering of his family. The State recommended that the circuit court impose a global sentence of 25 years of confinement and ten years of extended supervision.

During his sentencing remarks, Cruz's attorney denied that Cruz manipulated the system by causing delays. Trial counsel stated that "there isn't a single moment in this prosecution where Ms. Cruz was in a position to dictate scheduling or anything of the kind." He stated that he asked for adjournments because of COVID-related issues and witness issues, among other things, and explained that any delays were due to him or matters intrinsic to the case, not Cruz. Trial counsel also noted that some of the delays were caused by the fact that there had been two prior prosecutors before the current one. In his concluding remarks, trial counsel requested a prison sentence consisting of ten years of initial confinement and took no position on the length of the extended supervision.

Cruz did not address the court, however, trial counsel read aloud a statement that she wrote. According to trial counsel, he did so because Cruz was "not certain she could get through it." The statement read as follows:

Your Honor, I would like to start by offering my sincere and heartfelt apologies to the victim's family, the Grabners, as well as the victim himself. I'm very sorry for what has happened and what cannot be undone, the hardship and pain this has brought to the family as well as my family. This tragedy has affected me in a very serious and horrific way.

I hope I will be given a chance to live a reasonable, productive life. I hope and pray that you will consider my admission of complicity and my sincere remorse along with my efforts to make myself a better person as you decide what my punishment should be. I humbly ask for your leniency.

The circuit court began its sentencing comments by stating that, in determining a "fair and appropriate sentence, I'm looking at the gravity of this offense, the defendant's character, the need to protect the public, along with things, like punishment, deterrence, rehabilitation." The court explained that it would address a "side issue" because Grabner's grandfather and Cruz's trial counsel had raised it. According to the court, there were many delays over the two years since the case was charged and that "[s]ome of those delays were certainly legitimate." The court continued:

At one point in time, I remember addressing Ms. Cruz and telling her—and I believe then she didn't think this was going to go to trial because I agree with the way the State and the [presentence investigation report (PSI)] writer and victim's family assess[] this case.

Ms. Cruz is a manipulative, conniving person. She is a very bad actor, and I agree exactly with what the State said. She presents a façade to her family, ... this innocent person who is in her early 20's. In reality she's anything but that.

The circuit court immediately moved on to the issue of Cruz's tattoos, stating: "I'm not going to address it other than it's in the PSI, it's from the victim's family, she's covered in tattoos, including a teardrop tattoo." The court remarked that "maybe it's urban lore" that a teardrop tattoo signifies that a person is bragging about killing someone and gave trial counsel the opportunity to address the tattoo.

Cruz's attorney stated that "the teardrop she has is not consistent in size or placement with what is the urban lore" and that there was no indication of her involvement in any other homicides. The court then stated that, "just so we're clear," Cruz "is not being sentenced for her tattoos." The court continued by expressing understanding as to "where the victim's family is coming from" and repeated that "maybe it's a myth, and she's not being sentenced for her tattoos" but "urban lore[,] you stick a tattoo like that under your eye means you killed somebody."

Directing its attention to Cruz, the circuit court stated it would give her a chance to address the matter, though it made clear she was not required to. Cruz's attorney interjected and clarified that, based on what Cruz had just told him, the tattoo was not a tear, but rather a small heart with a break line through it. The court asked the prosecutor if he wished to confirm the description, and the prosecutor, apparently having examined the tattoo, stated that it was correct that the tattoo was a heart, not a teardrop. The court acknowledged that the matter was resolved.

Returning to what is described as the "main point" of its sentencing comments, the circuit court explained it believed Cruz was "one of the ringleaders in the case." The court discussed Cruz's upbringing in a family that cared for her, saying that Cruz was incorrect in her assertions that her upbringing was difficult. Additionally, the court remarked that, based on its observations of her during a dozen or so pretrial hearings as well as the trial, and given its judicial experience presiding over hundreds of homicide cases, she appeared to the court to lack remorse and had a "completely unaffected" and "disinterested" demeanor in the case. The court additionally noted it was "gall[ed]" by Cruz's attempt to equate the suffering of Grabner's family to that of her own. Referencing the statement Cruz's attorney read aloud, the court stated it did not believe Cruz actually felt bad that Grabner was dead and that it thought the only remorse she

had was for the fact that she was going to be sentenced to prison. The court noted Cruz had a tendency, as reflected in the PSI, “to blame others for her situation.”

Regarding the gravity of the offense, the court stated that she and her co-actors “dumped this teenager’s body in a street like a dog.” The court stated that this was an aggravating factor and noted that the person who found the body thought it was garbage tossed in an alley. The court additionally commented that Cruz did not do anything to stop the incident and that she possessed a gun despite the fact that she was not allowed to do so. The court made clear that Cruz “had a right to a trial” and “[s]he exercised her right,” but the jury decided she was guilty.

Regarding the need to protect the public, the circuit court stated Cruz posed an “extreme risk to the public” and that there was a high likelihood that she would reoffend. The court noted that Cruz’s co-actor, who fired the fatal shot into Grabner’s neck, received a sentence of 25 years of initial incarceration and 12 years of extended supervision after pleading guilty. The court explained that Cruz’s sentence should be similar, even though she was not the one who fired the shot. The court deemed Cruz’s criminal record to be another aggravating factor.

On the felony murder count, the circuit court sentenced Cruz to 20 years of initial confinement and 5 years of extended supervision. On the felon in possession of a firearm count, it ordered five years of initial confinement and five years of extended supervision, consecutive to the felony murder count. In its final remarks, the court reiterated that it was not sentencing Cruz

based on her tattoos and that it only raised that issue because it was discussed in the PSI and by Grabner's grandfather.<sup>4</sup>

Cruz sought postconviction relief. She argued: (1) the circuit court erroneously exercised its discretion by punishing her for failing to accept guilt and express remorse; (2) the court sentenced her based on inaccurate information when it held her responsible for delays in the case; and (3) the “overall tenor” of the court’s sentencing remarks reflect that it was objectively biased against her. The court denied the motion.

### *Discussion*

#### **I. The circuit court did not erroneously exercise its sentencing discretion.**

Cruz renews her postconviction arguments on appeal. The first issue Cruz raises is whether the circuit court erroneously exercised its sentencing discretion. She claims that she was punished for failing to accept guilt and for not expressing remorse.

Sentencing is within the discretion of the circuit court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We give sentencing decisions “a strong presumption of reasonability because the circuit court is best suited to consider the relevant factors and demeanor of the convicted defendant,” *id.*, ¶18 (citation omitted); therefore, the defendant has a heavy burden to show an erroneous exercise of discretion, *State v. Harris*, 2010 WI 79, ¶30, 326

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<sup>4</sup> The sentence on the felony murder count was later modified to comply with WIS. STAT. § 973.01(2)(b)10., which states that the term of confinement in prison “may not exceed 75 percent of the total length of the bifurcated sentence.” On the felony murder charge, the circuit court reduced the initial confinement period to 18 years and increased the extended supervision period to 7 years.

Wis. 2d 685, 786 N.W.2d 409. A sentencing court erroneously exercises its discretion if it “actual[ly] reli[ed] upon clearly irrelevant or improper factors.” *Id.* (emphasis omitted).

The Fifth Amendment right against self-incrimination “extends to sentencing.” *State v. Pico*, 2018 WI 66, ¶49, 382 Wis. 2d 273, 914 N.W.2d 95. Consistent with this protection, a sentencing court may not “attempt to compel an admission of guilt” at sentencing, nor may the court impose “a harsher sentence solely because the defendant refused to admit his guilt.” *State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994).

That does not mean it is wholly out of bounds for the sentencing court to consider a defendant’s refusal to admit guilt. A sentencing court may consider a defendant’s refusal to admit guilt “as an indication of his lack of remorse.” *Id.* at 916. And, a lack of remorse “may well be relevant” to certain factors that the court is obligated to consider at sentencing, such as “the defendant’s demeanor, [the] need for rehabilitation, and the extent to which the public might be endangered by [the defendant] being at large.” *State v. Baldwin*, 101 Wis. 2d 441, 459, 304 N.W.2d 742 (1981). Accordingly, a sentencing court does not erroneously exercise its discretion if it considers a defendant’s lack of remorse “as one factor amongst many,” *Pico*, 382 Wis. 2d 273, ¶52, or if the court’s consideration of lack of remorse “bears ‘a reasonable nexus’ to a relevant, proper factor,” *State v. Dodson*, 2022 WI 5, ¶10, 400 Wis. 2d 313, 969 N.W.2d 225 (citation omitted).

To demonstrate an erroneous exercise of discretion, a defendant must show that the defendant’s refusal to admit guilt or lack of remorse was given “undue and almost overwhelming weight,” *Baldwin*, 101 Wis. 2d at 457, and was essentially “the north star in developing [the] sentence,” *Pico*, 382 Wis. 2d 273, ¶52.

In its written decision denying Cruz's postconviction motion, the circuit court, explained:

The court has reviewed the sentencing transcript and is not persuaded that [the court] gave undue or overwhelming weight to the defendant's lack of remorse. As the State points out, "[w]hile the court did discuss Cruz's failure to take responsibility for her actions at length, it did [so] as part of its discussion of Cruz's character, her risk to reoffend as well as the violent nature of the homicide. [The court] identified and discussed a wide variety of facts and factors that influenced [the] sentence—not just a lack of remorse." The defendant unfairly downplays [the court]'s consideration of other factors as "only passing references." The court appropriately commented on the gravity of the offenses, the defendant's background and character, her role as one of the ringleaders in this case, her failure to do anything to stop Cvikel from waving a gun around or stopping the victim's body from being dumped in an alley like garbage, her risk to the community, and the need for significant punishment, among other factors. The court is not persuaded that [it] gave lip service to the multitude of other factors [it] considered. Yes, the victim's lack of remorse was a significant sentencing consideration, but that does not necessarily mean that the court gave it undue or overwhelming weight. The court is not persuaded that [the] sentencing decision crossed that line, and therefore, the defendant's motion for resentencing on this basis is denied.

(Record citation omitted.)

Having reviewed the sentencing transcript, this court agrees with the circuit court's rationale as to this claim and adopts this reasoning as our own. *See* WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009) ("When the [circuit] court's decision was based upon a written opinion or a statement upon the record of its grounds for decision that adequately express the panel's view of the law, the panel may incorporate the [circuit] court's opinion ... and affirm on the basis of that opinion."). Cruz failed to make the requisite showing to support this claim.

## II. The circuit court did not rely on inaccurate information at sentencing.

Next, we consider whether the circuit court relied on inaccurate information at sentencing when, according to Cruz, it blamed her for trial delays. She claims that this inaccurate information was “the launching pad” for the court’s idea that she was manipulative, a thought the court “persisted with ... throughout its sentencing rationale.”

“A defendant has a constitutionally protected 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. A defendant who seeks relief because the circuit court used inaccurate information at sentencing must show that the information was inaccurate and that the court actually relied upon it. *Id.*, ¶26. Whether a defendant has been denied this due process right is a question of law that this court reviews independently. *Id.*, ¶9.

Cruz has not shown that she was sentenced upon inaccurate information. As detailed earlier in this opinion, the circuit court prefaced its comments on the delays by calling the matter a “side issue” and stating it was only discussing it because Grabner’s grandfather and Cruz’s attorney had discussed it. In any event, the court never stated that Cruz was responsible for the delays, so there was no inaccurate information for the court to rely upon. If the court’s mention of the delays in this case was a launching pad, it was a launching pad only insofar as it propelled the court to quickly move on to the relevant sentencing factors, starting with its assessment of Cruz’s character.

### III. Cruz has not shown judicial bias at sentencing.

Lastly, Cruz argues that the circuit court's use of impermissible factors and the overall tenor of its remarks reflect judicial bias. "The right to an impartial judge is fundamental to our notion of due process. We presume a judge has acted fairly, impartially, and without bias; however, this presumption is rebuttable." *State v. Goodson*, 2009 WI App 107, ¶8, 320 Wis. 2d 166, 771 N.W.2d 385 (citation omitted). Cruz, as the party asserting bias, has the burden to overcome the presumption of impartiality by a preponderance of the evidence. See *State v. Herrmann*, 2015 WI 84, ¶24, 364 Wis. 2d 336, 867 N.W.2d 772.

A party asserting bias can allege that a judge was either subjectively biased or objectively biased. *Id.*, ¶26. Objective bias can exist in two situations: "(1) where there is an appearance of bias; and (2) where objective facts demonstrate that a judge treated a party unfairly." *State v. Marcotte*, 2020 WI App 28, ¶17, 392 Wis. 2d 183, 943 N.W.2d 911.

Cruz does not argue that the sentencing court was subjectively biased or had actual objective bias. Rather, her argument is that there was objective bias because "there is a serious risk of actual bias based on objective and reasonable perceptions." Specifically, Cruz asserts: "Through the eyes of a reasonable person, the sentencing court's erroneous blaming of Ms. Cruz for trial delays and its use of her lack of remorse as aggravating sentencing factors offer convincing evidence of bias," which also "permeated much of the rest of the sentencing proceeding."

The question before us then is whether Cruz has demonstrated that there was an appearance of bias that "revealed a great risk of actual bias." *Herrmann*, 364 Wis. 2d 336, ¶31 (citation omitted). "[T]he appearance of bias offends constitutional due process principles

whenever a reasonable person—taking into consideration human psychological tendencies and weaknesses—concludes that the average judge could not be trusted to ‘hold the balance nice, clear and true’ under all the circumstances.” *Goodson*, 320 Wis. 2d 166, ¶9 (citations omitted). “Whether a judge was objectively not impartial is a question of law that we review independently.” *State v. Pirtle*, 2011 WI App 89, ¶34, 334 Wis. 2d 211, 799 N.W.2d 492.

We conclude that Cruz has failed to rebut the presumption of impartiality. The circuit court’s statements do not reveal a great risk of actual bias. We have already addressed her claims as they relate to being blamed for trial days and the references to her lack of remorse and deemed them to lack merit. Cruz’s representations that the court “wrongly seiz[ed] upon the tattoo [on her face] as evidence of her homicidal tendencies” and improperly castigated her for her personal statement are not supported by our review of the court’s remarks. Cruz seemingly casts any criticisms of her as evidence of objective bias. “A judge’s negative comments do not[, however,] automatically equal bias[.]” *Id.* A reasonable person would not view the court’s remarks at sentencing and conclude that the circuit court could not be trusted to hold the balance nice, clear, and true.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*