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**DISTRICT III**

February 27, 2018

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

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2016AP1830-CR            State of Wisconsin v. Gerald M. Niemi  
2016AP1831-CR            (L. C. Nos. 2012CF1212, 2012CF1254)

Before Stark, P.J., Hruz and Seidl, 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).**

Gerald Niemi, pro se, appeals an order denying his motion for resentencing or sentence modification. Niemi contends he was sentenced based on false information provided by the presentence investigation report (PSI) and the assistant district attorney. Upon our review of the parties' briefs and the record, we conclude at conference that the order should be summarily affirmed.

Niemi was charged with three counts of uttering a forgery and one count of misdemeanor theft. He entered no-contest pleas to the three forgery charges, and the theft charge was dismissed and read in for sentencing purposes. The circuit court imposed consecutive and concurrent sentences totaling six years' initial confinement and six years' extended supervision, consecutive to any other sentences Niemi was then serving.

The PSI provided details of Niemi's juvenile and adult record including charges, convictions, sentences, and revocations of parole and extended supervision. The agent's summary and conclusions included the statement: "Mr. Niemi, age 47, appears before this court for his 17th, 18th and 19th Forgery convictions and his 24th, 25th and 26th felony convictions." At the sentencing hearing, the assistant district attorney referred to the PSI's assertion that these were Niemi's seventeenth, eighteenth and nineteenth forgery convictions. At that point, the court interrupted the State's argument to say it had read the PSI and the court was "very well aware of his prior record because it is so significant. The bulk of the PSI really focuses on his criminal record because it's so extensive."

When explaining the sentences it imposed, the circuit court noted the seriousness of the crimes, the impact on the victims, and the need to protect the public. Regarding Niemi's character, the court noted Niemi's successful restitution to previous victims of his forgeries, but it faulted Niemi for selecting vulnerable individuals and for his failure to control the drug addiction that motivates his crimes. The court also noted Niemi's "significant prior record, [which] includes juvenile convictions and multiple convictions as an adult." Reviewing the PSI summary of Niemi's prior record, the court specifically noted forgery convictions in 1996, 2002 and 2012 involving seven or eight entries in multiple counties. The court also noted Niemi's

criminal activities “really pick up” in 2012, and it highlighted Niemi’s “extremely poor” performance in community-based supervision.

In his postconviction motion and on appeal, Niemi contends he was sentenced on false information because he did not have seventeen, eighteen or nineteen forgery convictions. Niemi contends he had ten prior forgery convictions, but concedes in his reply brief that he missed a Milwaukee forgery conviction. The circuit court denied the motion, finding it was not focused on the number of convictions, but rather Niemi’s “cycle of behavior.” The court was aware of Niemi’s prior record, but it determined the volume of forgery convictions—as opposed to charges dismissed and read in for sentencing purposes—was not a significant factor.

A defendant seeking resentencing based on inaccurate information at the sentencing hearing must show by clear and convincing evidence that the information was inaccurate and that the court relied on the inaccurate information. *State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. This court reviews de novo whether the defendant has met that burden. *State v. Coolidge*, 173 Wis. 2d 783, 789, 496 N.W.2d 701 (Ct. App. 1993).

Niemi has not established that the circuit court relied on inaccurate information when it imposed the sentences in these cases. At no point did the court specify the number of forgery convictions that influenced its sentencing decision. The increasing volume of forgeries after 2012 and the pattern of violations that influenced the court’s decision did not depend on the precise number of convictions. The judgments of conviction attached to Niemi’s postconviction motion show multiple forgery and other offenses dismissed and read in for sentencing purposes in his earlier cases. Because the court did not give explicit attention or specific consideration to

the exact number of prior forgery convictions, Niemi has not established that the misinformation formed the basis for his sentences. *See Tjepelman*, 291 Wis. 2d 179, ¶14.

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21 (2015-16).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*