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DISTRICT II

October 8, 2025

To:

Hon. Anthony C. Nehls
Circuit Court Judge
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Katie Babe
Electronic Notice

Sarah Burgundy
Electronic Notice

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

2023AP2142-CR State of Wisconsin v. Dammahum A. Gibson (L.C. #2020CF386)

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).

Dammahum A. Gibson appeals a judgment of conviction and order denying his postconviction motion. He argues he was sentenced based on inaccurate information or, alternatively, that he has demonstrated a new factor entitling him to sentence modification. 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] We affirm.

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

In May 2020, Gibson fired two shots at a rival in an escalation of their verbal altercation. He ultimately entered guilty pleas to two counts of first-degree recklessly endangering safety and two counts of bail jumping, each with the dangerous weapon penalty enhancer. The presentence investigation report (PSI) chronicled nine juvenile cases for Gibson between 2014 and 2016, all of them originating in Illinois. Details for many of those cases, however, were sketchy; though the PSI described several of the offenses as battery or robbery, most entries indicated "[d]etails not provided" and stated Gibson was merely "[d]etained" or "[r]eferred to [c]ourt." As sources for the information, the PSI indicates the author had corresponded with Juvenile Probation and Court Services in Chicago and had reviewed "Cook County, Illinois Juvenile Reports."

When confronted by the PSI author with his juvenile history, Gibson himself had argued it was unreliable. According to the PSI, during their discussion of his criminal history, Gibson "only recall[ed] two robbery charges, one incident for which he received probation, and another one which he was found not guilty. Mr. Gibson reported not remembering any other robbery related charges." However, when the circuit court inquired at the outset of the sentencing hearing whether there were any additions or corrections to the PSI, defense counsel stated Gibson had read the PSI, they had discussed it, and Gibson had no additions or factual corrections.

The circuit court began its sentencing remarks by "comment[ing] on some of the arguments that were made by counsel." The court disagreed with defense counsel's assertion that Gibson's history was devoid of violent offenses, noting the instances of juvenile robbery and battery. The court repeatedly observed it was unclear what the disposition of those offenses were, adding, "So there were at least charges or arrests in his past for what I consider being more

violent offenses. It's hard to tell, you know, what happened when he was a juvenile with respect to those. They may not have been adjudications. In fact, it doesn't appear there were."

The circuit court's sentencing analysis focused on the severity of the offense and the need to protect the public. The court identified Gibson as the provocateur for the incident, which ultimately resulted in an exchange of gunfire near residences that imperiled many bystanders. A bullet entered a child's bedroom. The court emphasized the severity and high risk of initiating gunfire in a residential neighborhood. For first-degree recklessly endangering safety, it imposed consecutive sentences consisting of three and one-half years' initial confinement and four years' extended supervision. For bail jumping, it imposed concurrent one-year jail sentences.[2]

Gibson sought resentencing or sentence modification, asserting the PSI incorrectly described his juvenile offense history. During the postconviction proceedings, as on appeal, Gibson asserted that there were no records of five of the juvenile offenses listed in the PSI, and two other offenses were duplicates of one another. Gibson maintained that he had only two juvenile offenses, one for robbery of a phone and one for retail theft for stealing a pair of jeans.

The postconviction court denied the motion. It concluded that although the sentencing court had made some prefatory comments about the juvenile offenses (including by noting that it was unclear what the disposition of many of the listed offenses was), the substance of the court's sentencing analysis was focused entirely on the circumstances of the offense and the need to protect the public. The postconviction court further determined that the sentencing court's

[2] The Honorable Dale L. English presided over Gibson's case through sentencing. The Honorable Anthony C. Nehls presided over the postconviction proceedings.

references to Gibson's background referred not to his juvenile record but to his upbringing, lack of parental involvement, and behavioral issues. The postconviction court concluded the sentencing court was "keenly aware that [the listed juvenile offenses] are … more allegations than adjudications," and Gibson's actual sentence was not a product of the juvenile record.

On appeal, Gibson renews his argument that the sentencing court violated his due process right to be sentenced based on accurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. This constitutional guarantee guards against the "careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by the services which counsel would provide." ***Townsend v. Burke***, 334 U.S. 736, 741 (1948).

A defendant is entitled to resentencing on the basis of inaccurate information if he or she demonstrates that (1) the information at the original sentencing was inaccurate, and (2) the sentencing court actually relied on the inaccurate information at sentencing. ***State v. Travis***, 2013 WI 38, ¶21, 347 Wis. 2d 142, 832 N.W.2d 491. Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews de novo. ***Tiepelman***, 291 Wis. 2d 179, ¶9.

Here, like the postconviction court, we conclude Gibson has not demonstrated that the sentencing court actually relied on the juvenile record contained in his PSI. A defendant demonstrates actual reliance by showing that the court gave "explicit attention" or "specific consideration" to the inaccurate information, such that the misinformation formed part of the basis for the sentence. ***Id.***, ¶14. This two-step analytical process ensures that we review the circuit court's comments in the context of the whole sentencing transcript, as doing so allows us

to ascertain whether the court's sentence was animated by the consideration of proper factors, even if some of the court's remarks arguably gave explicit attention to inaccurate information. ***State v. Alexander***, 2015 WI 6, ¶¶26, 29, 360 Wis. 2d 292 858 N.W.2d 662.

As the State concedes, the sentencing court undoubtedly gave explicit attention to Gibson's juvenile record. However, the postconviction court appropriately recognized that Gibson's sentence was the product of the sentencing court's focus on the circumstances of the offense, and the need to protect the public from such future risky behavior. Indeed, the sentencing court specifically stated that it wanted to address some of the arguments the attorneys had made before it "outline[d its] analysis," clearly differentiating between its prefatory remarks and the methodology it would be applying to determine Gibson's sentence. Under the facts here, we agree with the postconviction court that the allegedly inaccurate information did not form any part of the basis for the sentence imposed.[3] *See* ***id.***, ¶29.

Gibson alternatively argues that he is entitled to sentence modification.[4] A motion for sentence modification invokes a circuit court's inherent authority to modify a criminal sentence.

[3] Two alternative bases support affirming the order denying Gibson's postconviction motion. First, by failing to object to the information in the PSI or to offer corrections in response to the sentencing court's inquiry, Gibson has forfeited his challenge. *See* ***State v. Coffee***, 2020 WI 1, ¶32, 389 Wis. 2d 627, 937 N.W.2d 579. Gibson does not present any arguments or allegations relating to ineffective assistance of trial counsel.

Second, given the totality of the sentencing court's comments, we conclude that the State has demonstrated that any reliance on inaccurate information was harmless. *See* ***id.***, ¶38. As set forth above, the court distinguished between its prefatory comments and its sentencing analysis. Although Gibson argues the inaccurate information inferentially tainted the court's references to his recidivism scores on the COMPAS assessment, the court was explicit that it did not rely on COMPAS results.

[4] Gibson's proposed modification is to run his two recklessly endangering safety convictions concurrently rather than consecutively.

State v. Harbor, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. A court may modify its sentence based upon the showing of a new factor, which is defined as "'a fact or set of 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 (citation omitted). Whether a fact or set of facts put forth by the defendant constitutes a new factor is a question of law.[5] ***Id.***, ¶36.

We conclude Gibson has not demonstrated that a new factor exists. We agree with the State's contention that the correct information regarding Gibson's juvenile history was not unknowingly overlooked by all parties. Gibson himself challenged the accuracy of the PSI author's information, asserting he had been charged only twice as a juvenile.

Gibson responds to this argument by noting that he and the PSI author only "discuss[ed]" Gibson's juvenile record, and it is unclear whether Gibson was provided with a written copy of his juvenile record at the time. We are unpersuaded that the means of delivery of the information, at least under the circumstances here, affects the "new factor" analysis. Whether written or verbal, the PSI author made Gibson aware of what the author believed was Gibson's juvenile offense history, and Gibson challenged the accuracy of that information. The appellate

[5] There is a second step to the analysis. If a new factor is present, the postconviction court exercises its discretion to determine whether that factor justifies sentence modification. ***State v. Harbor***, 2011 WI 28, ¶37, 333 Wis. 2d 53, 797 N.W.2d 828. Gibson argues that because the sentencing court did not preside over the postconviction proceedings, and because the postconviction court did not directly rule on his sentence modification claim, we should review the matter de novo. However, because we conclude that Gibson has not demonstrated a new factor as a matter of law, the standard of review applicable to the next, discretionary step is irrelevant.

record shows the inaccurate information about Gibson's juvenile record was not unknowingly overlooked.[6]

Additionally, for the reasons set forth above, we conclude Gibson's juvenile record was not highly relevant to the sentence the circuit court imposed. In all, Gibson has not demonstrated that he is entitled to resentencing based on inaccurate information, nor that he is entitled to sentence modification by virtue of a new factor.

Based on the foregoing,

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

[6] Having reviewed the PSI with Gibson, trial counsel must have been aware of Gibson's contentions regarding his juvenile record. Gibson, for his part, argued in his postconviction motion that he was focused on other things during their meeting and he found the PSI "overwhelming." Yet, Gibson does not dispute the PSI author's account of the discussion regarding his juvenile offenses, so the materiality of Gibson's apparently cursory review of the PSI to his new-factor claim is unclear. Again, we note that this appeal does not present any allegations regarding ineffective assistance of trial counsel.