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DISTRICT II

March 25, 2026

To:

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Circuit Court Judge
Electronic Notice

Nicole M. Masnica
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Christine A. Remington
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1863

State of Wisconsin v. Rabindranauth Persaud (L.C. #2005CF420)

Before Neubauer, P.J., Gundrum, 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).

Rabindranauth Persaud appeals from an order denying his postconviction motion for relief. He seeks either sentence modification due to a new factor or resentencing due to inaccurate information. 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 the summer of 2004, Persaud repeatedly photographed his then 11-year-old stepdaughter in the nude, sexually assaulted her, and sexually exploited her. The State charged him with over 100 felony counts. Persaud eventually pled guilty to three counts: child enticement, first-degree sexual assault of a child, and sexual exploitation of a child. The remaining counts were dismissed.

Prior to sentencing, Persaud’s attorney provided the circuit court with a copy of a psychological evaluation report prepared by Dr. Charles Lodl. In the report, Dr. Lodl opined that Persaud presented a low to moderate risk of reoffending. Dr. Lodl used multiple assessment tools² to support his opinion. Those tools relied, in part, upon Persaud’s self-reporting, which minimized his responsibility.³

At sentencing, the circuit court found Persaud’s statements to Dr. Lodl to be “self-serving” and “totally incredible.” Persaud’s lack of credibility and remorse made him, in the court’s view, “a far greater danger than what he wants to perceive himself to be.” Given this, the gravity of the offenses, the concern for deterrence, and the concern for the victim, the court imposed an aggregate sentence of 37 years of initial confinement and 35 years of extended supervision.

² The assessment tools were the Multiphasic Sex Inventory and the Millon Clinical Multiaxial Inventory – III.

³ For example, Persaud said that he took nude photographs of his stepdaughter to answer her questions about sex and help her self-esteem. He denied any personal interest or gratification in the activity. Persaud also denied having sexual contact with his stepdaughter, though that denial is contradicted by both photographs and statements to police.

Years later, in 2023, Persaud filed a postconviction motion for relief. Citing a recent letter from Dr. Lodl, Persaud noted that a new assessment tool—the Static-99R—supported the conclusion that he presented a below average risk of reoffending. This, Persaud maintained, constituted a new factor. He also accused the circuit court of sentencing him upon inaccurate information when it seemingly discounted Dr. Lodl’s opinion regarding risk because the assessment tools he used relied, in part, upon Persaud’s self-reporting.⁴ Accordingly, Persaud requested either sentence modification or resentencing.

After a hearing on the matter, the circuit court denied the postconviction motion in a written order. The court was not persuaded that Persaud had demonstrated the existence of a new factor or showed he was sentenced upon inaccurate information. This appeal follows.

On appeal, Persaud renews the arguments made in his postconviction motion. We begin with his claim of a new factor based on the Static-99R assessment tool.

A circuit court may modify a sentence upon a defendant’s showing of a new factor. *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is ““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 ... it was unknowingly overlooked by all of the parties.”” *Id.*, ¶40 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Whether a fact or set of facts constitutes a new factor is a question of law that this court reviews independently. *See Harbor*, 333 Wis. 2d 53, ¶33.

⁴ At sentencing, the circuit court observed that, “part of [Dr. Lodl’s] conclusions are based upon the statements and what [the court] perceive[s] to be the self[-]serving statements and frankly the incredible statements of the defendant himself regarding how he was viewing this activity.”

Like the circuit court, we are not convinced that Persaud has demonstrated the existence of a new factor. The fact that an assessment tool placed Persaud at a below average risk of reoffending was not new information to the circuit court. The court was already aware of such favorable assessment tool predictions from Dr. Lodl's original report. Moreover, Persaud's risk of reoffending was not highly relevant to the court's sentence. As noted, the court focused on other factors such as Persaud's character (specifically, his minimization of responsibility), the gravity of the offenses, the concern for deterrence, and the concern for the victim.

We turn next to Persaud's claim that he was sentenced upon inaccurate information. This argument stems from the circuit court's alleged discounting of Dr. Lodl's opinion regarding risk.

"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 also a question of law that this court reviews independently. *See id.*, ¶9.

Again, we are not convinced that Persaud has shown he was sentenced upon inaccurate information. To begin, the circuit court never stated that Persaud was a high risk to reoffend. It simply observed that his lack of credibility and remorse made him "a far greater danger than what he wants to perceive himself to be." But even if the court had made such a statement, it would have been within its discretion to do so. After all, Dr. Lodl's opinion regarding risk was based upon assessment tools that the court was not obligated to accept. *See State v. Samsa*, 2015 WI App 6, ¶11, 359 Wis. 2d 580, 859 N.W.2d 149 (rejecting the argument that a sentencing

court's discretion must yield to an assessment tool). Thus, the court could have discarded the assessment tools and reached its own conclusion regarding risk without violating Persaud's right to be sentenced upon accurate information.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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