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DISTRICT II

April 29, 2026

To:

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Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
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Christopher D. Sobic
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You are hereby notified that the Court has entered the following opinion and order:

2025AP690-CR State of Wisconsin v. Darrell R. Davison (L.C. #2022CF1094)

Before Neubauer, P.J., 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).

Darrell R. Davison appeals from a judgment of conviction and an order denying his postconviction motion seeking resentencing. Davison contends the circuit court improperly relied on his race in imposing sentence and therefore erroneously exercised its discretion. 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 August 2022, the State charged Davison with six felony counts, all as a second and subsequent offense, stemming from three separate September 2021 transactions wherein Davis sold crack cocaine to a confidential informant. Pursuant to a plea agreement with the State, Davison pled guilty to counts one and two—manufacture/deliver cocaine (>1G but <=5G) contrary to WIS. STAT. § 961.41(1)(cm)1r and WIS. STAT. § 961.48(1)(b) (count one) and maintaining a drug trafficking place contrary to WIS. STAT. § 961.42(1) and § 961.48(1)(b) (count two)—and the remaining counts were dismissed but read in at sentencing.[2]

Immediately after accepting Davison's guilty pleas, the circuit court proceeded to sentencing. As agreed, the State argued for five years of initial confinement followed by three years of extended supervision. Davison agreed with the State's recommendation and asked only that the sentences run concurrent to any other sentence as he was then serving two years on a revocation.

[2] Counts three and five charged Davison with manufacture/deliver cocaine (<=1G), as a second and subsequent offense, possession with intent to deliver/distribute a controlled substance on or near a park contrary to WIS. STAT. §§ 961.41(1)(cm)1g, 961.48(1)(b), and 961.49(1m)(b)1. Counts four and six charged Davison with maintaining a drug trafficking place, as a second and subsequent offense, possession with intent to deliver/distribute a controlled substance on or near a park contrary to WIS. STAT. §§ 961.42(1), 961.48(1)(a) and (b), and 961.49(1m)(b)1.

Although the Record reflects that count six was dismissed at Davison's August 9, 2022 initial appearance based on duplicity concerns, that charge remained in the later-filed Information. The Judgment of Conviction also notes that count six was dismissed and read in at sentencing. Davison noted this discrepancy in his postconviction motion and asked that count six not be considered should he be resentenced, or alternatively, that the Judgment of Conviction be amended to reflect that count six was dismissed. He did not, however, argue that count six having been read in at sentencing, despite having been previously dismissed, was itself grounds for granting his postconviction motion. Davison does not raise this issue in his appellate briefs, and we therefore do not address it further. *See, e.g.*, ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491-93, 588 N.W.2d 285 (Ct. App. 1998) (issue raised in circuit court but not argued on appeal deemed abandoned); ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (appellate courts need not address undeveloped arguments).

The circuit court focused its sentencing comments on the ***Gallion***[3] factors, which it described as falling into four primary categories: (1) gravity/nature of the offense; (2) Davison's character; (3) protecting the public; and (4) punishment/accountability. The court specifically noted Davison's lengthy criminal history, much of which stemmed from drug-related charges, the impact of drugs and drug-dealing on the community, Davison's failure to maintain a job, and his repeated return to selling drugs upon release from prison. The court also referenced a study regarding the negative impact of crack cocaine on the African American community and stated Davison was "hurting [his] own people" by selling crack cocaine and that the court "can't have that because [it] want[s] all of us to get better." The court sentenced Davison to six years of initial confinement and three years of extended supervision on count one and three years of initial confinement and two years of extended supervision on count two. The court made the sentences concurrent to each other but consecutive to any other sentences.

Davison thereafter filed a postconviction motion seeking resentencing on the ground that the circuit court improperly relied on his race at sentencing. Specifically, Davison focused on the court's comments regarding the study about the negative impact of crack cocaine on African American communities and argued the court's subsequent commentary that Davison was "hurting [his] own people" by continuing to sell drugs and that the court could not "have that" amounted to an improper reliance on race at sentencing because it "indicate[s] that the court faulted [him] for being a Black man who was hurting the Black community with his actions." The postconviction court denied Davison's motion without a hearing. Davison appeals.

[3] ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197.

Davison contends the circuit court's comments, and the sentence imposed that exceeded the State's recommendation, establish that the court relied on an improper factor—his race—at sentencing. We disagree.

"Sentencing courts have considerable discretion" in imposing sentence. ***State v. Harris***, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. "In exercising discretion, sentencing courts must individualize the sentence to the defendant based on the facts of the case by identifying the most relevant factors and explaining how the sentence imposed furthers the sentencing objectives." ***Id.***, ¶29; *see also* ***State v. Gallion***, 2004 WI 42, ¶¶32-48, 270 Wis. 2d 535, 678 N.W.2d 197. We review a court's sentencing decision under the erroneous exercise of discretion standard. ***Harris***, 326 Wis. 2d 685, ¶30. A court erroneously exercises its discretion if it "imposes its sentence *based on* or in *actual reliance upon* clearly … improper factors." ***Id.***

To establish a circuit court considered or actually relied on an improper factor, an appellant must provide clear and convincing evidence "that it is 'highly probable or reasonably certain' that the circuit court actually relied on race … when imposing its sentence." ***Id.***, ¶¶3, 34-35, 45, 66. A court actually relies on an improper factor if it pays "explicit attention" or gives "specific consideration" to that improper factor and the improper factor "formed part of the basis for the sentence." ***State v. Alexander***, 2015 WI 6, ¶25, 360 Wis. 2d 292, 858 N.W.2d 662 (citation omitted); ***State v. Tiepelman***, 2006 WI 66, ¶14, 291 Wis. 2d 179, 717 N.W.2d 1. (citation omitted).

Davison does not argue that the circuit court's reference to the study regarding the impact of crack cocaine on African American communities itself was improper, but rather that its reference to the study, combined with its comments immediately thereafter that Davison was

"hurting" his "own people" and that the court could not allow that to happen, sufficiently establishes, by clear and convincing evidence, that the court relied on his race in imposing sentence. He says these comments "demonstrate a high probability" the court "relied on race" and shows that the court "faulted Mr. Davison for being a Black man who was hurting the Black community"—as opposed to any other community—"with his actions."

While race is an improper factor to consider at sentencing, a circuit court's comments regarding race are not inherently improper if the "potentially offensive comments … bear a reasonable nexus to proper sentencing factors." *See* ***Harris***, 326 Wis. 2d 685, ¶¶4, 33, 67. Having reviewed the Record, we are satisfied the court did not improperly consider or actually rely on Davison's race.

Here, the circuit court's comments arose in the context of addressing the nature of Davison's current offense (selling drugs just five months after being released from prison), his character (inability to maintain consistent employment and a lengthy criminal history of selling drugs), the need to protect the public (the harm illegal drugs have on the community), and the need to hold Davison accountable for his repeated decision to sell drugs—all of which are proper factors to consider at sentencing. *See, e.g.*, ***Gallion***, 270 Wis. 2d 535, ¶¶38-49; ***Harris***, 326 Wis. 2d 685, ¶¶59, 67. The court's challenged comments therefore bore "a reasonable nexus to proper sentencing factors[,]" as they were direct reflections on the impact of Davison's repeated drug-related offenses on the community and the subsequent need to both protect the public from Davison and to hold Davison accountable for his choices. *See* ***Harris***, 326 Wis. 2d 685, ¶¶4, 67. Moreover, the court did not only state that Davison was "hurting" his "own people" but rather also referenced the impact of Davison's decision to "spread around cocaine or crack cocaine to people in [his] community" as a whole.

We also reject Davison's suggestion that the challenged comments combined with the circuit court's imposition of a lengthier sentence than the State recommended indicate an improper reliance on his race. Sentencing courts are not bound by the parties' recommendations. *See* ***State v. Williams***, 2002 WI 1, ¶24, 249 Wis. 2d 492, 637 N.W.2d 733; ***State v. Hampton***, 2004 WI 107, ¶37, 274 Wis. 2d 379, 683 N.W.2d 14. Prior to accepting Davison's plea, the court informed him it was not bound by the terms of the parties' plea agreement and Davison confirmed he understood. It is clear from the sentencing transcript that the court imposed a lengthier sentence than recommended not because of Davison's race but rather due to the court's frustration with Davison's continued involvement with drug-related crimes throughout the course of his adult life.

In sum, Davison has not established the circuit court relied on an improper factor in imposing sentence, and he is therefore not entitled to resentencing. Accordingly, the postconviction court did not err in denying his postconviction motion.

Therefore,

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