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DISTRICT II

June 10, 2026

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Walworth County Courthouse
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Sara Lynn Shaeffer
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1902-CR

State of Wisconsin v. Tony James Perales (L.C. #2021CF418)

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).

Tony James Perales appeals from a judgment of conviction and order denying postconviction relief. Based upon our review of the briefs and the Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ Because the circuit court did not rely on misinformation that the victim was deceased and the court provided ample reasoning for the sentence, we affirm.

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

BACKGROUND

On August 1, 2021, Perales, driving without a license, was fleeing from police at speeds of up to 113 mph when he lost control of his vehicle and struck a guardrail. Upon striking the guardrail, Perales caused Deputy Benson,² a responding officer, to suffer great bodily injury. The deputy did not die from his injuries. Perales pled guilty to five counts, including first-degree reckless injury, fleeing an officer resulting in great bodily injury, operating a motor vehicle without a license resulting in great bodily injury, felony bail jumping, and injury by intoxicated use of a vehicle causing great bodily injury.

At sentencing, Deputy Benson testified as to the extent of his injuries, which required 45 surgical procedures. He testified that his scalp had to be “stapled back on[,]” that his face had to be “sewn back on[,]” that his lips and nose had to be reattached, that he suffered damage to his left ear and left eye, that his teeth needed permanent implants, and that he suffered from PTSD. The deputy’s wife testified as to the extent of the treatment required for those injuries. For his part, Perales presented a number of mitigating factors including that he was young, had good employment history, enjoyed strong family support, helped care for a disabled aunt, took quick and complete responsibility by pleading guilty, and he personally expressed great remorse for his actions.

A presentence investigation report (PSI) recommended a sentence of ten years of initial confinement for the first count and concurrent sentences for each other count. Deputy Benson

² To protect the identity of the victim, we use a pseudonym. *See* WIS. STAT. RULES 809.19(1)(g); 809.86(4).

requested the maximum aggregate sentence for the counts. The State recommended a “lengthy prison sentence.” Instead, the circuit court sentenced Perales to twelve years of initial confinement followed by five years of extended supervision for the first count, seven years of initial confinement followed by five years of extended supervision for the second count, one year of initial confinement followed by one year of extended supervision for the fourth count, and five years of initial confinement followed by three years of extended supervision for the fifth count, all of which are to run consecutively. For the third count, the court sentenced him to six months of initial confinement to run concurrently with the sentence for the first count. While this was not the maximum sentence, it was higher than the recommendation in the PSI. The court noted the deputy’s service in imposing its sentence, and elaborated that “crime is deterred by rigorous enforcement and stern outcomes for those who commit grave crimes. And [Perales was] involved in grave criminal behavior, life-threatening criminal behavior.” The court stated that “a message has to be sent” and “that, to me, outweighs all other considerations.”

Perales filed a postconviction motion seeking a new sentencing hearing. He argued: (1) that the circuit court relied on inaccurate information when imposing the sentence; and (2) that it did not adequately articulate the sentence and thereby erroneously exercised its discretion. For the inaccurate information claim, Perales cites three instances in which the court discussed homicide.

First, after calling Deputy Benson’s testimony impressive and commending his heroism, the circuit court stated, “I tell people this all the time when I’m sentencing for the very crime that was talked about here, homicide by intoxicated motorists, the sentence that is handed down can never reflect the value of the lives that are lost.” Second, the court stated, “the leading cause of death for males in this country until very recently -- for males under 45 was vehicular homicide,

and a large percentage of it caused by intoxicated motorists.” Lastly, the court stated, “I read once ... that in high-speed chases, in 1 percent of the cases there’s a fatality. I don’t know if that’s true or not, but there’s certainly large numbers of them and they happen all the time.” Perales argued that these references to homicide showed the court relied on inaccurate information that Deputy Benson had not been severely injured, but had died. For his claim that the court inadequately articulated its reasoning for the sentence, Perales argued that the court failed to consider the mitigating factors he advanced and did not explain why 25 years of initial confinement was necessary, and did not explain why consecutive sentences were necessary.

The circuit court rejected that argument and explained that “[r]eferences to vehicular homicide in the sentencing transcript were made to illustrate the potential consequences of the offense, not as determinative sentencing factors.” The motion for resentencing was, therefore, denied. Perales appeals.

DISCUSSION

We review de novo a defendant’s request for resentencing on the basis that he has been denied his 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 convicted offender does not have a constitutional right to a particular sentence available within a range of alternatives, but the offender does have a right to a fair sentencing *process*—one in which the [circuit] court goes through a rational procedure of selecting a sentence based on relevant considerations and accurate information.

Id., ¶26 (citation omitted).

“A defendant who requests resentencing due to the circuit court’s use of inaccurate information at the sentencing hearing ‘must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing.’” *Id.* (citation omitted). The sentence must be founded on information so materially inaccurate that the proceedings are lacking in due process. *State v. Travis*, 2013 WI 38, ¶84, 347 Wis. 2d 142, 832 N.W.2d 491. We review the entire sentencing transcript to determine whether the court gave explicit attention to the inaccurate information and whether the information accounts for part of the basis for the sentence. *State v. Alexander*, 2015 WI 6, ¶30, 360 Wis. 2d 292, 858 N.W.2d 662.

However, sentencing decisions are within the circuit court’s discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Our review is limited to whether the circuit court erroneously exercised its discretion in imposing its sentence. *Id.* “A circuit court properly exercises its discretion if it relies on relevant facts in the record and applies a proper legal standard to reach a reasonable decision.” *State v. Thiel*, 2012 WI App 48, ¶6, 340 Wis. 2d 654, 813 N.W.2d 709.

On appeal, Perales reiterates his claims: first, that the circuit court relied on inaccurate information that the victim was deceased when the victim was, in fact, alive, and second, that the court erroneously exercised its discretion by failing to adequately explain the imposed sentence and by failing to consider mitigating factors presented by Perales. Perales argues that the court relied on inaccurate information because it mentioned homicide three times, when the case did not involve homicide.

We conclude that in each of these instances, the circuit court was not actually asserting that Deputy Benson had died, it was just using that as an example of extreme injury cases. In the first instance, where the court stated, “I tell people this all the time when I’m sentencing for the very crime that was talked about here, homicide by intoxicated motorists, the sentence that is handed down can never reflect the value of the lives that are lost[,]” the court had just referred to the victim, stating that it was “impressed” the victim had testified. Perales insists that a literal reading of the first statement is required and that such a reading indicates the court genuinely thought Deputy Benson died despite the fact that he was present in the courtroom and had just testified. It is implausible that the court relied on information that the clearly non-deceased deputy had died. As for the second and third instances, the court was clearly discussing the danger of intoxicated driving, in general, and the potential ensuing harms as reasons to punish similar life-threatening conduct.

Even if the circuit court did rely on inaccurate information, we conclude that the State established beyond a reasonable doubt that the error would be harmless because the sentence would have been the same, regardless. If the defendant proves that the court relied on inaccurate information, “the burden then shifts to the State to prove the error was harmless.” *Travis*, 347 Wis. 2d 142, ¶23. To prove the error was harmless, the State “must prove that it is clear beyond a reasonable doubt the same [sentence] would have occurred absent the error.” *Id.*, ¶71. The court noted that Perales drove intoxicated, drove without a driver’s license, and made a conscious choice to elude an officer, stating “that’s when the risk level just rises exponentially.” The court expressly desired to punish this “life-threatening criminal behavior.” It stated that “a message has to be sent that if [someone] engage[s] in this kind of behavior, we want [them] to pull over to the side of the road and take [their] consequences” and that this overrode all other

considerations. Because the court based its sentencing on deterring Perales's conduct based on its nature, and the conduct could still be characterized as life-threatening whether or not the deputy actually survived, any error was harmless.³

Perales next argues that the circuit court did not adequately articulate the reason behind the 25 years of initial confinement, failed to consider the mitigating factors offered by Perales, and did not explain its choice of consecutive rather than concurrent sentences, thereby erroneously exercising its discretion. Sentencing decisions are within the circuit court's discretion. *Gallion*, 270 Wis. 2d 535, ¶17. Our review is limited to whether the circuit court erroneously exercised that discretion. *Id.*

In *State v. Ziegler*, 2006 WI App 49, 289 Wis. 2d 594, 712 N.W.2d 76, we outlined:

[t]he principal objectives of a sentence include, but are not limited to, the protection of the community, the punishment of the defendant, rehabilitation of the defendant, and deterrence to others. A [circuit] court should indicate the general objectives of greatest importance and explain how, under the facts of the particular case, the sentence selected advances those objectives. Besides the objectives of the sentence, the [circuit] court must also identify the factors that the court considered in arriving at the sentence and must indicate how those factors fit the objectives and influenced the sentencing decision. The primary sentencing factors which a court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public. The weight given to each factor is within the discretion of the sentencing court.

³ Perales contends that the State cannot make this argument because it did not raise it below. *See State v. Ortiz*, 2001 WI App 215, ¶25, 247 Wis. 2d 836, 634 N.W.2d 860. Perales argues the State's argument requires a new factual finding, and, thus, cannot be raised; but, it does not follow from *Ortiz* that concluding the error was harmless based solely on the Record would itself be a factual finding. Thus, we disregard that argument.

Id., ¶23 (internal citations omitted). A circuit court is not required to explain the sentence with mathematical precision, but only the “general range of the sentence imposed.” *Gallion*, 270 Wis. 2d 535, ¶49.

We conclude the circuit court considered each of the principal objectives behind sentencing. The Record indicates the court discussed whether to prioritize punishment or rehabilitation, concluding that “rehabilitation sometimes follows from punishment.” The court clearly indicated that it considered punishment important in this case and provided its reasons for imposing the sentence, analogizing to a child learning that he “can’t behave in that way because [they will] have to suffer the consequences.” The court considered the safety of the community and deterrence, and discussed the statistical prevalence of deaths from intoxicated motorists, stressing that intoxicated driving was “life-threatening” and “antisocial.” It considered the idea of rehabilitation, but stressed that Perales’s conduct was “conscious[.]” “not a disease,” and “inexcusable.”

We conclude the circuit court appropriately considered each of the primary sentencing factors and the mitigating information. The court began its rationale by considering Perales’s character, stating he was not “evil” and was not being accused of “doing anything intentionally[.]” The court considered the PSI’s focus on personal risk factors, but noted it did not have “a lot of confidence” in the methods used to determine its recommendation, explaining that Perales had a “relatively serious record.” The court emphasized public safety, stating that a “lenient approach to this kind of crime” is responsible for higher numbers of intoxicated motorists in Wisconsin, and that intoxicated motorists made conscious choices to “jeopardize people’s safety[.]” For the gravity of the offense, the court considered Perales’s offense to be “grave criminal behavior, life-threatening criminal behavior.”

Perales also argues that the circuit court did not explain why 25 years was the length necessary to advance the objectives of sentencing or why the sentence had to be consecutive, but this argument misunderstands the legal requirement. Courts are not required to describe their sentencing with mathematical precision. *Id.* Rather, “an explanation for the general range of the sentence” is sufficient. *Id.* We conclude that the circuit court’s repeated mention of the need for punishment, the declaration that the crime was serious and “life-threatening[,]” and the discussion of the need to deter intoxicated driving is satisfactory. Because it considered the primary sentencing objectives, looked to mitigating and aggravating factors and provided clear reasons for its weighing of each, the court did not erroneously exercise its discretion in sentencing Perales to 25 years of initial confinement.

We distinguish this case from *Hall*, which Perales cites to support his erroneous exercise of discretion allegation. The *Hall* court added the sentence for eight individual offenses consecutively to create a total sentence exceeding the life of the defendant, despite the fact that none of the individual offenses carried a life sentence. *State v. Hall*, 2002 WI App 108, ¶4, 255 Wis. 2d 662, 648 N.W.2d 41. That sentence was vacated on appeal on grounds that the circuit court erroneously exercised its discretion. *Id.*, ¶20. The *Hall* court concluded that, because the sentence exceeded the life of the defendant, it was “meaningless” and could not be explained by the factors the circuit court considered. *Id.*, ¶18. Further, the court had merely acknowledged the PSI’s recommendation, which differed from the ultimate sentence by over 200 years, without discussing the report’s conclusions and stating the court’s reasons for differing. *Id.*, ¶16-17. Here, the sentence imposed does not total the entirety of Perales’s life, and the court explicitly cast doubt on the PSI, pointing to Perales’s “relatively serious record” that it believed

contradicted the low-risk finding. Accordingly, we conclude that the circuit court satisfactorily explained the sentence imposed and did not erroneously exercise its discretion.

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