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DISTRICT II

November 13, 2024

To:

Hon. Teresa S. Basiliere
Circuit Court Judge
Electronic Notice

Carlos Bailey
Electronic Notice

Desiree Bongers
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

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

2022AP2096-CR

State of Wisconsin v. Brian S. Mylonas (L.C. #2020CF347)

Before Neubauer, 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).

Brian S. Mylonas appeals from a judgment of conviction after he pled no contest to felony intimidation of a victim and disorderly conduct. He also appeals from an order denying his postconviction motion, which asserted that he was sentenced on inaccurate information. Mylonas contends that the circuit court erred in denying his postconviction motion. 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 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

This case arises from a domestic dispute between Mylonas and his ex-girlfriend, Ellen,² following a breakup several weeks prior. Mylonas had moved out of their apartment and returned one morning to retrieve some personal property. He and Ellen got into an argument, and a neighbor called the police. When police arrived, Ellen accused Mylonas of sexually assaulting her that day and two days earlier that month. She also said that Mylonas had threatened to kill her if she called the police.

The State charged Mylonas with felony intimidation of a victim, disorderly conduct, and three counts of sexual assault. As the matter proceeded toward trial, Mylonas filed a notice of alibi, listing several witnesses who would testify as to his whereabouts on the dates of the first two alleged sexual assaults.³ Additionally, DNA test results that were expected to corroborate the most recent alleged sexual assault came back negative.

Ultimately, the parties reached an agreement where Mylonas would plead no contest to felony intimidation of a victim and disorderly conduct, and the State would dismiss the sexual assault charges outright. As part of the agreement, the State would also recommend that the circuit court impose five years of probation with nine months of jail time. Mylonas, meanwhile, was free to argue.

At sentencing, the circuit court heard from the parties, which gave their recommendations. It also heard from Ellen, who asked that Mylonas receive “confinement time” in addition to counseling/therapy. This request differed than the one in her earlier written impact

² We use the same pseudonym for the victim as the parties.

³ The witnesses, as well as photographic evidence, placed Mylonas approximately 100 miles away from the location of the first two alleged sexual assaults.

statement, which called for “time served” as well as putting Mylonas “back on his medicine and counseling.”

In its sentencing remarks, the circuit court considered the seriousness of the offenses, Mylonas’ character, and the need to protect the public. In discussing the seriousness of the offenses, the court stated the following:

Mr. Mylonas is not here to be sentenced for the sexual assault. If even 50 percent of the circumstances in this complaint are truthful, it’s serious. The situation is serious. But you’re here to be sentenced today for the counts in which you’ve pled.

Felony intimidation of a victim is a very serious crime. You simply do not threaten somebody that you once loved. I mean, that’s what it comes down to. You don’t treat somebody that way, you don’t treat anybody that way. And it has serious consequences when you do, because it dissuades victims from testifying. So in the long-term, impact on the community can be significant. And that’s why we have crimes that are against intimidation of victims.

In addition, disorderly conduct, although a misdemeanor, can certainly set a serious situation as well, as it does appear to be of what occurred here.

The circuit court also considered Ellen’s victim statement. The court observed:

I think it is pretty tall telling, because you have a victim in here, and the indication was, is that she didn’t tell the truth, but yet, in her own victim statement, she didn’t ask for prison time, she asked that he get counseling. I don’t think someone like that is certainly motivated by revenge here. I do heavily weigh this victim’s statement here.

In the end, the circuit court imposed four years of probation with six months of jail time. This was more than Mylonas’ recommendation of three years of probation.

Mylonas subsequently filed a postconviction motion seeking resentencing. In it, he complained that he was sentenced on inaccurate information. Specifically, Mylonas pointed to the circuit court’s remarks suggesting that “50 percent of the circumstances in this complaint are

truthful” and that Ellen was not “motivated by revenge here” because “she didn’t ask for prison time” in her victim statement. Mylonas noted that much of the complaint involved the dismissed sexual assault charges and that Ellen did ask for confinement at sentencing. After a hearing on the matter, the circuit court denied Mylonas’ motion. This appeal follows.

“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 must show that the information was inaccurate and that the court actually relied upon the inaccurate information at sentencing. *Id.*, ¶26. Whether a defendant has been denied this due process right is a question of law that we review de novo. *Id.*, ¶9.

Here, we are not persuaded that Mylonas was denied his due process right to be sentenced upon accurate information. Although the circuit court referenced the circumstances of the complaint in its remarks, the transcript makes clear that it was not sentencing Mylonas for the alleged sexual assaults; rather, it was sentencing him solely for the crimes to which he pled no contest. It was those crimes of felony intimidation of a victim and disorderly conduct that the court deemed “serious.” Thus, Mylonas cannot show that the court actually relied upon inaccurate information from the complaint.

As for the circuit court’s other remark, it was not inaccurate to say that Ellen “didn’t ask for prison time” in her victim statement. As noted, Ellen’s earlier written impact statement called for “time served” as well as putting Mylonas “back on his medicine and counseling.” The fact that she later asked for confinement at sentencing does not undermine the court’s impression

that she was not “motivated by revenge here” in making her initial allegations.⁴ In any event, the court’s impression about Ellen is not an objective fact but rather a subjective opinion that cannot be described as “accurate” or “inaccurate.” Accordingly, we affirm.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are 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

⁴ Had Ellen been motivated by revenge, she presumably would not have described Mylonas as a “very caring person” in her written impact statement.