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DISTRICT IV

August 7, 2025

To:

Hon. Michael P. Screnock
Circuit Court Judge
Electronic Notice

Carrie Wastlick
Clerk of Circuit Court
Sauk County Courthouse
Electronic Notice

John D. Flynn
Electronic Notice

Laura M. Force
Electronic Notice

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

2024AP341-CR State of Wisconsin v. Jason R. Smith (L.C. # 2021CF171)

Before Graham, P.J., Nashold, and Taylor, 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).

Jason Smith appeals a judgment of conviction and a circuit court order denying his postconviction motion for resentencing. Smith argues that he is entitled to resentencing because the circuit court relied on inaccurate information at sentencing. 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] For the reasons stated below, we affirm.

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

Smith pled guilty to an amended count of conspiracy to possess with intent to deliver cocaine in an amount between 15 and 40 grams, and to possession of a firearm by a felon. At Smith's sentencing hearing, the prosecutor commented on the magnitude of Smith's offenses:

> [T]hese are serious offenses…. Over half a kilo of marijuana found in a bag, along with just under half a kilo of cocaine, and just shy of $50,000. That prompted a search warrant of a home wherein was located a gun, a scale with powder, a jar with another three-tenths of a kilo of marijuana, thousands more in cash, blotter paper, which is traditionally used to make other drugs, and 16 hits of acid. While this isn't the largest bust in county history, it certainly is up there.

The circuit court asked the prosecutor, "The complaint suggests there was 407.5 grams of cocaine. How does that, standing alone, rank in the annals of Sauk County drug enforcement?" The prosecutor responded, "I personally don't think I have seen a -- or read a larger bust than that. That said, people with much more institutional knowledge than I are sitting directly behind me. They may know. If you'd like, I can confer with them." After conferring with Sauk County's drug task force detective, the prosecutor told the court that the detective

> indicated that in his time here he's never seen anything close to this amount of cocaine, and that includes cases which would never have been in front of the judiciary in this county but would have instead been immediately prosecuted by the federal system. He said this is far and above the most he's ever seen.

In response, Smith's counsel argued:

> If we're talking about 400 grams of cocaine in this county and that's the largest one that this police officer has ever seen -- and I don't know how long he's been there -- but I would say that's peanuts compared to a lot of things that are charged in federal court, because they don't go by grams in federal court, they go by kilos. This isn't even a kilo, [it is] four-tenths of a kilo.

When sentencing Smith, the circuit court considered the protection of the public, the gravity of the offenses, and Smith's rehabilitative needs. *See* WIS. STAT. § 973.017(2) (setting forth three primary sentencing factors). In considering the first two factors, the court stated:

> What the Court is confronted with today is drug dealing in -- at a level that our local drug enforcement agents have not seen in this county, and if it's peanuts in other locales, then that's to our benefit and -- but there's no doubt that -- that drugs are a scourge on our community, that they're killing people in our community, and when confronted with a case involving the largest amounts that our law enforcement officials can recall, a sentence that appropriately punishes the drug dealer and serves, if ever a sentence can, as a deterrent to other would-be drug dealers who wish to ply their trade in our county, such a sentence is warranted, appropriate, and necessary.

The court sentenced Smith to 15 years of initial confinement followed by 10 years of extended supervision for the conviction of conspiracy to possess with intent to deliver cocaine in an amount between 15 and 40 grams. For the possession of a firearm conviction, the court imposed a concurrent sentence of 3 years of initial confinement followed by 3 years of extended supervision.

Smith moved for postconviction relief, arguing, as relevant here, that he is entitled to resentencing because the circuit court "was misinformed as to how the quantity of cocaine in Mr. Smith's case compared with other drug busts in Sauk County." The court denied Smith's motion because it concluded that no inaccurate information was presented and that it did not rely on any inaccurate information at sentencing.

Smith appeals, renewing his postconviction argument. Specifically, Smith argues that "[t]he circuit court believed the amount of cocaine found on Mr. Smith was the largest drug bust in Sauk County history," which Smith argues is not true in light of three cases that Smith

identifies that originated in Sauk County and that involved larger quantities of cocaine. We reject Smith's argument.

"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; *see also* ***State v. Travis***, 2013 WI 38, ¶17, 347 Wis. 2d 142, 832 N.W.2d 491 ("A criminal sentence based upon materially untrue information, whether caused by carelessness or design, is inconsistent with due process of law and cannot stand."). To be entitled to resentencing, a defendant "must show by clear and convincing evidence that: (1) some information at the original sentencing was inaccurate, and (2) the circuit court actually relied on the inaccurate information at sentencing." ***State v. Coffee***, 2020 WI 1, ¶38, 389 Wis. 2d 627, 937 N.W.2d 579. We review de novo whether a defendant is entitled to resentencing based on the circuit court's reliance on inaccurate information at sentencing. ***Id.***, ¶17.

We reject Smith's argument because Smith fails to show by clear and convincing evidence that the circuit court relied on inaccurate information in sentencing him. Specifically, Smith fails to show that the court believed that the amount of cocaine involved in Smith's case was the largest amount in Sauk County's history. In arguing that he is entitled to resentencing, Smith relies on the court's statement that it was "confronted with … drug dealing … at a level that our local drug enforcement agents have not seen in this county." Although this statement, viewed in isolation, might appear to support Smith's argument, Smith's reliance on this statement is unavailing because, when viewed in context, it is clear that the court was referring to the drug detective's statement, as relayed to the court by the prosecutor, that the detective was not personally aware, based on the detective's professional experience, of any Sauk County case that involved a larger quantity of cocaine. Recall that, according to the prosecutor, the detective

"indicated that in his time here he's never seen anything close to this amount of cocaine …. He said this is far and above the most he's ever seen." Smith's counsel then described the quantity of cocaine as "the largest one that this police officer has ever seen – and I don't know how long he's been there." Moreover, not only did the prosecutor never argue that the amount of cocaine involved was unprecedented in Sauk County, the prosecutor in fact noted that "this isn't the largest bust in county history." Finally, shortly after stating that Smith's case involved "drug dealing … at a level that our local drug enforcement agents have not seen in this county," the court also described the case as "involving the largest amounts that our law enforcement officials *can recall*." (Emphasis added.) This further shows that the court was relying on the detective's statement that the detective was not aware of any Sauk County cases involving larger quantities of cocaine, and not on a mistaken belief that Smith's case involved the largest amount of cocaine that the county had ever seen.[2]

[2] Smith does not argue that the prosecutor stated that the amount of cocaine in Smith's case was the largest that the county had seen or that the prosecutor otherwise provided the circuit court with inaccurate information at sentencing; instead, Smith appears to suggest that the court misunderstood the significance of the information that was provided.

Separately, the parties dispute whether certain statements the circuit court made at the postconviction hearing constitute findings of fact to which this court must accord deference. Specifically, the court stated:

> [A]t no point when I asked the question or received [the prosecutor's] response or responses was I intending to ask for a statistical analysis of all drug busts in Sauk County's history nor was anybody in the room at that time reasonably misunderstanding that that was the information the Court was receiving from [the prosecutor] or from [the detective] through [the prosecutor].
>
> … I understood the information that [the prosecutor] provided the Court in response to the Court's question to be the best answer he could give in those brief moments that he had a chance to confer with [the detective] based on the collective memory of those two gentlemen in the moment.

(continued)

Viewed in context, the circuit court's statements do not constitute clear and convincing evidence that the court relied on inaccurate information that the quantity of cocaine in Smith's case was the largest in any Sauk County case. Accordingly, we reject Smith's arguments and affirm.

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

The State argues that these statements are findings of fact that must be upheld unless clearly erroneous, and in response, Smith argues that our review is de novo, and that we should independently review the sentencing transcript. We will assume for purposes of this opinion that Smith is correct. However, even when we independently review the transcript of the sentencing hearing, we conclude that Smith is not entitled to resentencing.