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**DISTRICT II**

May 29, 2024

To:

Hon. Daniel J. Borowski  
Circuit Court Judge  
Electronic Notice

Laura M. Force  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Kieran M. O'Day  
Electronic Notice

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

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2022AP1320-CR      State of Wisconsin v. Jeremy Michael Thompson  
(L.C. #2020CF543)

Before Gundrum, P.J., Neubauer and Grogan, 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).**

Jeremy Michael Thompson appeals from a judgment convicting him of possession with intent to deliver THC and an order denying his postconviction motion. Thompson argues: (1) that there are new factors that warrant sentence modification; and (2) that the prosecutor breached the plea agreement. 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).<sup>1</sup> We affirm.

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

The police discovered a large amount of marijuana in Thompson's home after a report from his now ex-wife. Thompson pled guilty to possession of THC with intent to deliver (1000-2500g) and was sentenced to three years and six months of initial confinement and four years of extended supervision. Thompson moved for postconviction relief, which was denied.

Thompson first argues that there are two new factors warranting sentence modification. A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the [circuit court] 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." *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted).

Thompson contends that the first "new factor" is a portion of the prosecutor's sentencing argument. He contends that the prosecutor incorrectly suggested that he was unemployed at the time of the offense by referring to the fact that his ex-wife told the police that she thought he was not employed but had gone back to selling drugs.

We reject this argument. The sentencing transcript shows that the prosecutor did not tell the circuit court at sentencing that Thompson was unemployed when the police found the marijuana in his home. To the contrary, the circuit court noted that many character letters came from Thompson's co-workers and the circuit court specifically asked the defense to clarify when Thompson began his employment, which was before this offense occurred. The record demonstrates that Thompson's employment status was known to the circuit court and the parties at the time of sentencing and, therefore, this argument fails.

Thompson's second new factor claim is that the circuit court relied on misconceptions about the societal impact of marijuana, viewing it as a "gateway drug" that significantly harms

society, contrary to studies showing less severe impacts. The circuit court’s sentencing remarks about the societal impact of marijuana were based on its extensive experience in the criminal courts, not on a misconception about the societal impact of marijuana. The post-sentencing information the defense presents about marijuana has no bearing on Thompson’s culpability in *this* case or the impact of his actions on the community. Because these studies are not highly relevant to the sentencing decision, this is not a new factor.

Thompson next argues that the State breached the plea agreement. “[A]n accused has a constitutional right to the enforcement of a negotiated plea agreement.” *State v. Duckett*, 2010 WI App 44, ¶8, 324 Wis. 2d 244, 781 N.W.2d 522. A breach occurs if the State materially and substantially deviates from the terms of the plea agreement. *State v. Williams*, 2002 WI 1, ¶38, 249 Wis. 2d 492, 637 N.W.2d 733.

Thompson contends that the prosecutor breached the agreement by not explicitly repeating the terms of the agreement at sentencing. There is no legal requirement that the prosecutor explicitly repeat the terms of the plea agreement at the sentencing hearing where the circuit court is aware of the terms. Here, the circuit court explicitly laid the terms of the plea agreement out at the beginning of the sentencing hearing, so it certainly was aware of the terms.

Thompson also suggests that the prosecutor’s use of the phrase “further confinement” during her sentencing remarks was an attempt to implicitly suggest that Thompson deserved more punishment than provided for in the plea agreement, which would be a breach of the agreement. Again, we reject this argument. The prosecutor’s comments were about whether probation would unduly depreciate the seriousness of the offense. The comments had nothing to

do with the joint sentencing recommendation for one year of initial confinement. We conclude that there was no breach of the plea agreement.

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.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*