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DISTRICT IV

September 9, 2013

To:

Hon. Sarah B. O'Brien
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2012AP546-CR	State of Wisconsin v. Jason G. Mitchell (L.C. # 2010CF273)
2012AP547-CR	State of Wisconsin v. Jason G. Mitchell (L.C. # 2011CF689)

Before Lundsten, Sherman and Kloppenburg, JJ.

Jason Mitchell appeals judgments of conviction and an order denying his motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Mitchell argues that he was sentenced on the basis of erroneous information. The State responds that Mitchell forfeited this issue by not making an objection at sentencing. Forfeiture is a discretionary decision by this court, and in this case we choose to address the merits instead.

To the extent Mitchell argues that the presentence report was erroneous because it listed the Florence County conviction twice, we disagree. The conviction was listed once for imposition of probation, and then a second time when sentence was imposed after revocation. Although listing that conviction twice might lead some readers to conclude that there were two convictions, a careful reading of the report would show that both listings have the same case number. Thus, although presented in a potentially confusing format, the information in the report was accurate in every respect. Accordingly, we reject Mitchell's argument that the report contained inaccurate information.

Beyond that, Mitchell argues that, at the time of sentencing, the court mistakenly *believed* there were two Florence County convictions. In denying Mitchell's motion, the circuit court did not state whether it correctly understood Mitchell's record at sentencing. Instead, the court stated that, due to "the large number of cases defendant had," if the Florence County conviction was counted twice, "it would not have made any difference in the sentence."

The State argues, and we agree, that, if the court incorrectly counted this conviction twice, the error was harmless because it would not have changed the ultimate sentence. Mitchell acknowledges that, as of sentencing, he had been convicted of five prior felonies, and the report also showed approximately the same number of additional misdemeanor convictions. The question, then, is whether the presence of one more or less felony conviction would have affected the court's sentence.

We are satisfied there is no reasonable possibility that it would have affected the sentence. The controlling sentence in this case was three years of initial confinement and three years of extended supervision. Mitchell's prior record was only part of the basis for the court's sentence. Other factors the court considered in relation to Mitchell's character included his difficult childhood, his substance addiction, his short marriage that may have ended due to him threatening his spouse, his lack of cooperation with evaluation and treatment, and a long-term pattern of "dishonesty and narcissism." Based on all of this, and before even reviewing Mitchell's prior convictions, the court concluded that he was "a very high risk of continuing to violate the law." After reviewing Mitchell's record, the court concluded that his record shows "that unless you are incarcerated, you are ripping off other people." None of this would be changed by a small adjustment in the number of his prior convictions.

IT IS ORDERED that the judgments and order are summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals