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**DISTRICT II**

January 8, 2014

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

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2013AP277-CR	State of Wisconsin v. Marianne A. Oleson (L.C. #2012CF63)
2013AP278-CR	State of Wisconsin v. Marianne A. Oleson (L.C. #2012CF260)

Before Brown, C.J., Reilly and Gundrum, JJ.

In these consolidated appeals, Marianne A. Oleson appeals from judgments of conviction and postconviction orders denying her motions for sentence modification and postconviction relief pursuant to WIS. STAT. § 974.06 (2011-12).<sup>1</sup> 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. We affirm the judgments and orders of the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

Oleson was convicted following pleas of no contest to six counts of theft by false representation, four counts of identity theft, and two counts of uttering a forgery. The circuit court sentenced Oleson to an aggregate sentence of twenty-one years of imprisonment, with seven years of initial confinement and fourteen years of extended supervision. The court ordered restitution as a condition of extended supervision.

Oleson appealed her judgments of conviction. She then filed motions for sentence modification and postconviction relief pursuant to WIS. STAT. § 974.06, which the circuit court denied.<sup>2</sup>

In these appeals, Oleson raises five arguments for review, none of which have any merit. She first contends that her constitutional rights were violated when she was held without bond for nine days following her arrest and later given an excessive bond.

As noted, Oleson's judgments of convictions were entered as a result of her no contest pleas. A no contest plea forfeits the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). Oleson alleges no claim relating to her detention and the amount of her bond that, if valid, affects the circuit court's jurisdiction in her case. Consequently, even if her claims could be raised in these appeals, Oleson forfeited the right to do so when she entered her no contest pleas.

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<sup>2</sup> The record was supplemented with the postconviction orders without objection. Therefore, they are properly before us. *See* WIS. STAT. § 808.04(8).

Oleson next contends that the circuit court erroneously exercised its sentencing discretion by failing to treat her bipolar disorder as a mitigating factor. She submits that her condition should result in a lesser sentence.

Contrary to Oleson's assertion, the circuit court did treat Oleson's bipolar disorder as a mitigating factor at sentencing. However, the court concluded that the disorder did not absolve Oleson of responsibility for her actions and, therefore, did not warrant a lesser sentence. The circuit court has considerable discretion in deciding what weight to give each of the factors it considered. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. We conclude that the court properly exercised that discretion in discussing Oleson's condition.

Oleson next contends that the circuit court erroneously exercised its sentencing discretion by imposing a sentence that affects her access to treatment. She maintains that she needs counseling for her bipolar disorder instead of confinement.

Oleson's third argument identifies no error of law in the circuit court's sentence. Here, the court considered whether a sentence of imprisonment was warranted and concluded that it was. The court emphasized that Oleson needs to know there are significant consequences for criminal offenses she committed. Upon review of the record, we are satisfied that the court stated its reasoning on the record and that reasoning indicates that discretion was properly exercised. *See State v. Iglesias*, 185 Wis. 2d 117, 128, 517 N.W.2d 175 (Ct. App. 1994).

Oleson next contends that she was sentenced on the basis of inaccurate information. Specifically, she complains that the State presented inaccurate information at sentencing when it claimed that (1) she hacked into a computer at the jail's law library, (2) she committed crimes

while in jail, (3) the restitution due was well over \$700,000, (4) she was previously on probation in Fond du Lac County, and (5) she had a relationship with a probation agent.

When a defendant seeks resentencing on the basis of inaccurate information, the defendant must establish by clear and convincing evidence both that the information at issue is inaccurate and that the sentencing court actually relied upon it. *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423. Here, the circuit court rejected Oleson’s claim because “[n]one of the alleged inaccuracies, if these were in fact inaccuracies, affected the court’s sentencing decision.” The record supports this ruling. As a result, we conclude that Oleson is not entitled to relief on this argument.

Finally, Oleson contends that the circuit court erroneously exercised its discretion in determining the amount of restitution. In particular, she challenges the ordered restitution to Randy Stafford, arguing that his claims for restitution are “not true.”<sup>3</sup>

This court independently determines whether the circuit court had authority to order restitution, given a particular set of facts. See *State v. Schmaling*, 198 Wis. 2d 756, 760, 543 N.W.2d 555 (Ct. App. 1995). However, we will not overturn findings of fact unless they are clearly erroneous. *State v. Holmgren*, 229 Wis. 2d 358, 366, 599 N.W.2d 876 (Ct. App. 1999).

After Oleson’s sentencing, the circuit court held a restitution hearing at which Stafford testified as to the cash and services Oleson obtained from him through her misrepresentations. The court evaluated his testimony and corroborating evidence and implicitly found that he was

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<sup>3</sup> The circuit court also ordered restitution to Michael Dirr. Although Oleson initially challenged that award in her appellant’s brief, she has since written this court a letter essentially withdrawing her argument due to a settlement she has reached with Dirr.

telling the truth. Because Oleson has not shown that finding to be clearly erroneous, we affirm the court's award.<sup>4</sup>

Upon the foregoing reasons,

IT IS ORDERED that the judgments and orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>4</sup> To the extent we have not addressed an argument raised by Oleson on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).