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**DISTRICT IV**

March 25, 2014

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

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2013AP164-CR

State of Wisconsin v. Marcus O. Singleton (L.C. # 2011CF1543)

Before Lundsten, Sherman and Kloppenburg, JJ.

Marcus Singleton appeals a judgment of conviction and sentence for two counts of child enticement. He also appeals an order denying his postconviction motion for resentencing. Singleton contends that the circuit court relied on inaccurate information at sentencing by speculating that Singleton may have an additional child victim in Singleton's family. 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 (2011-12).<sup>1</sup> We summarily affirm.

Singleton was convicted, on jury verdicts, of two counts of child enticement for exposing a sex organ to a child. Singleton moved for postconviction relief, arguing that he was sentenced on inaccurate information. Singleton cited the sentencing court's expression of concern that there was a similarity in appearance between Singleton's victims and a younger member of Singleton's family. The circuit court rejected Singleton's argument that the court had considered unproven criminal conduct as an aggravating factor at sentencing, and denied the motion.

“[A] criminal defendant has a due process right to be sentenced only upon materially accurate information.” *State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998). “A defendant who requests resentencing due to the circuit court's use of inaccurate information at the sentencing hearing must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing.” *State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1 (quoted source and internal quotation marks omitted).

We conclude that Singleton was not sentenced based on inaccurate information. Singleton complains about the following remarks by the circuit court:

You know what else I found very curious, in fact, frighteningly curious? When I talk about people not knowing the full Marcus Singleton, I can't help but think that one of these letters [from Singleton's supporters] talks about an 11-year-old [family member], that [Singleton has] known her since age six, and I'm guessing that that was the girl that was here during the course of trial. And I found it positively chilling to note that she looked considerably like the victims in this case. You know what happens

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

not infrequently? It's that years later, years later after a trusted person is in a child's life, only then does a child feel comfortable to talk about events that have occurred in their life. I certainly hope that isn't the case here.

Singleton contends that these statements establish that the circuit court concluded that Singleton had sexually assaulted his younger family member, when there was no evidence such an assault had ever occurred.

We do not read the court's statements as a conclusion that Singleton had sexually assaulted a younger member of Singleton's family. The court did not state a belief that Singleton had assaulted the younger family member. Rather, the court expressly stated that it hoped Singleton had not done so. Indeed, as Singleton points out, nothing before the circuit court indicated that Singleton had, in fact, sexually assaulted anyone in his family, and the court did not state that anything in the record led it to that conclusion. The court simply noted the possibility that Singleton had another similar child victim.

Moreover, viewing the court's statements in the context of the court's sentencing comments as a whole, it is clear that the circuit court was making general observations based on the information adduced at trial, in Singleton's sexual history questionnaire, and in letters of support for Singleton. The court first observed that Singleton's trial testimony was nonsensical and did not "comport with any reasonable view of the human existence." The court then noted that Singleton's assertions at trial were "amateur lies by a guy who got caught ... doing something shocking, doing something that he felt exceedingly guilty about that he wants to bury in the back of his consciousness forever, that he wants to hide from all who love him, from all who support him." The court noted all of the letters the court received in support of Singleton and that people are often shocked when a person they love or respect behaves in a shocking way.

The court then stated that Singleton knew what he was doing, and that he was sick and had an issue that he needed to deal with. In reference to Singleton's sexual history questionnaire, the court noted that Singleton had admitted to similar behavior in the past and to having sex with minors. The court then made the disputed comments as to the possibility of Singleton having a victim within Singleton's family. The court then stated: "What I've got in front of me is that you were engaged in some deviant sexual behavior for which you have zero remorse. You continue to maintain that you didn't do it. You continue to maintain this absurd story, this exculpatory story."

It is clear that, overall, the circuit court's comments were an observation of a pattern of undesirable behavior that reflected negatively on Singleton's character and Singleton's lack of remorse, both of which were proper considerations at sentencing. See *Elias v. State*, 93 Wis. 2d 278, 285, 286 N.W.2d 559 (1980); *State v. Fuerst*, 181 Wis. 2d 903, 915-16, 512 N.W.2d 243 (Ct. App. 1994). Intertwined in these considerations, and based on Singleton's history, the circuit court noted that it was possible that Singleton had another unreported victim. However, as the circuit court explained in its order denying Singleton's postconviction motion, the court did not purport to impose punishment in this case based on any speculative criminal conduct. Rather, the court sentenced Singleton based on the gravity of the offenses in this case and Singleton's character and criminal history.

Because Singleton has not shown that the circuit court believed that Singleton had, in fact, sexually assaulted a younger family member, or that the circuit court actually relied on that mistaken belief in sentencing Singleton, we reject Singleton's argument that he was sentenced based on inaccurate information. Accordingly, we reject Singleton's argument that he is entitled

to resentencing because the circuit court relied on inaccurate information or that the circuit court erroneously exercised its sentencing discretion.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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