



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

September 27, 2016

To:

Hon. Kevin E. Martens
Circuit Court Judge
Safety Building Courtroom, # 502
821 W. State Street
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Scott E. Rosenow
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Melvin Ray House 160834
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2014AP292-CR

State v. Melvin Ray House (L.C. # 2010CF1522)

Before Kessler, Brennan and Brash, JJ.

Melvin Ray House appeals a judgment convicting him of homicide by negligent handling of a dangerous weapon and felon in possession of a firearm. He also appeals an order denying his motion for postconviction relief. House argues that: (1) he is entitled to resentencing based on inaccurate information; (2) there is a new factor warranting resentencing; (3) he received ineffective assistance of trial counsel; and (4) his right to confront his accusers was violated.

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 (2013-14).¹ We affirm.

House's brief is largely incomprehensible. His arguments are undeveloped and scattered throughout the brief, and he has not adequately cited to legal authority or the record. As a general rule, we will not consider arguments that are undeveloped. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Here, we consider House's arguments as best as we are able to discern them.

House first argues that he is entitled to resentencing because the circuit court relied on inaccurate information when it sentenced him. "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. A defendant must show that information at the original sentencing was inaccurate and that the circuit court actually relied on it in imposing sentence. *Id.*, ¶26.

House contends that the circuit court considered inaccurate information because the State characterized his crime as a brutal killing, which suggests the killing was intentional, while he pled guilty to a *negligent* act, negligent homicide. We reject this argument. The circuit court was well aware that House pled guilty to negligent homicide, rather than intentional homicide, because it accepted House's plea to the reduced charge in the middle of House's trial for first-degree intentional homicide.

¹ All references to the Wisconsin Statutes are to the 2013-14 versions unless otherwise noted.

House next argues that the circuit court relied on inaccurate information because it considered his prior abuse of the victim in framing his sentence, even though his prior maltreatment of the victim was not proven. House conflates two concepts. The fact that House's abuse was not proven beyond a reasonable doubt at a trial does not mean that the information was inaccurate. Holly Brooks, Shari Pharr, and Rita Lee testified about House's maltreatment of the victim. House has not shown that the circuit court relied on inaccurate information in sentencing him.

House next argues that there is a new factor that warrants sentence modification. A new factor is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, 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). Whether a new factor exists is a question of law that this court reviews independently. *Id.*, ¶36.

House argued in his postconviction motion that his significant physical health problems were a new factor that entitled him to resentencing. On appeal, he recasts his claim, arguing that a medical book discussing schizophrenia is a new factor because he has the illness. Neither House's health problems nor the medical book discussing a mental illness from which House suffers are new factors because the circuit court was aware of House's physical and mental health problems when it sentenced him. Facts known to the circuit court at sentencing are not “new factors.” *Id.*

House next appears to argue that Pharr's trial testimony that she saw the victim on Easter Sunday is a new factor because that was one day after the victim allegedly disappeared.² Pharr testified at trial that she last saw the victim on Easter Sunday, but on redirect examination Pharr testified that she was unsure whether she last saw the victim on Easter Sunday or an earlier day. Regardless, the circuit court's sentencing remarks show that it was aware that the date on which the victim was killed was not firmly established. Again, a fact known to the circuit court at the time of sentencing is not, by definition, a "new factor." *See id.*

House next argues that he received ineffective assistance of trial counsel and that his constitutional right to confront the witnesses against him was violated. House did not raise these arguments in the circuit court; therefore, he may not raise them on appeal. *See State v. Rogers*, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995) ("[A] party seeking reversal may not advance arguments on appeal which were not presented to the trial court.").

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

² As explained above, House's arguments are difficult to follow.