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DISTRICT I/IV

February 21, 2017

To:

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Circuit Court Judge
Milwaukee County Courthouse
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Milwaukee, WI 53233-1427

Hon. Ellen R. Brostrom
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You are hereby notified that the Court has entered the following opinion and order:

2016AP632-CR

State of Wisconsin v. Christopher S. Fidler (L.C. # 2014CF4348)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Christopher S. Fidler pled guilty to one count of repeated sexual assault of the same child. *See* WIS. STAT. § 948.025(1)(e) (2015-16).¹ The circuit court sentenced Fidler to twenty-three years' imprisonment, comprised of thirteen years of initial confinement and ten years of extended supervision. Fidler filed a postconviction motion arguing that, in imposing sentence,

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

the court had relied on inaccurate information, namely that the victim was Fidler's niece. The court denied the motion.² 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 summarily affirm.

Facts

The criminal complaint related the victim's statement to police that her mother had married Fidler's brother and that Fidler was "her uncle." At sentencing, counsel made the following remarks to the circuit court. The prosecutor said that the victim lived with her biological mother every other weekend, and that Fidler was staying in the victim's biological mother's house, usually sleeping in the basement. Fidler's attorney told the court that the victim was not related to Fidler "directly," but was "close to [Fidler] through his ... brother. And so the victim in this case would, I guess, be [Fidler's] niece-in-law." Fidler's attorney also remarked that Fidler's acts had "fracture[d]" the "family dynamic."

In its sentencing remarks, the circuit court referred to the "serious" nature of the crime, stating that Fidler had "sexually assaulted ... your niece, your brother's daughter." The court further stated that Fidler had been taken "into [the victim's] home, they trusted you, [the victim] trusted you, and you violated that trust. And her mother describes the impact that it's had on both the victim and her family."

² Fidler was sentenced by the Honorable Timothy G. Dugan. The Honorable Ellen R. Brostrom denied Fidler's motion for resentencing.

It is undisputed that the victim is not related by blood to Fidler. Fidler's brother is married to the victim's biological mother. On appeal, Fidler argues that the circuit court's reference to the victim as Fidler's "niece, [his] brother's daughter" is inaccurate information that warrants resentencing.

Discussion

A defendant has a constitutional due process right to receive a sentence based upon accurate information. *State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998). A defendant who moves for resentencing on the ground that the circuit court relied on inaccurate information must establish that there was information before the court that was inaccurate, and that the court actually relied on the inaccurate information. *State v. Tiepelman*, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1. We review whether a defendant has been denied this due process right de novo. *Id.*, ¶9.

Fidler argues that the circuit court relied on "the inaccurate observation that Mr. Fidler had assaulted his 'niece,' his 'brother's daughter.'" Fidler argues that the court's reference to the victim as Fidler's "'niece,' his 'brother's daughter'" indicates that the court "believed that there was a biological relationship" between Fidler and the victim. Fidler's argument is not supported by the record.

As stated, defense counsel brought directly to the circuit court's attention the relationship of the victim to Fidler, the prosecutor reinforced the nature of that relationship, and Fidler points to nothing in the court's sentencing remarks that shows that the court misunderstood. Fidler himself concedes that "the information presented to the court did not contain the inaccurate

statement that [the victim] was Mr. Fidler’s biological niece.” Nor did the court make the inaccurate statement that the victim was Fidler’s biological niece.

It is clear from the context of the circuit court’s comments that it understood the victim’s relationship to Fidler. The court accurately referred to the victim as being part of Fidler’s brother’s family, and emphasized that it was the familial relationship that made this crime so serious. The court focused on the broader concept of trust within a family setting. The precise nature of the relationship between Fidler and the victim was not the driving factor; rather it was that Fidler had abused the trust given him by his brother’s family. That trust would be broken if the victim were Fidler’s “niece by blood” or his “step-niece.” Either way, she was his niece, his brother’s daughter.

In sum, Fidler fails to show that the circuit court relied on inaccurate information when it sentenced Fidler.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals