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June 21, 2017

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

2016AP1616-CR State of Wisconsin v. Glenn Lamar Taylor (L.C. #2010CF5685)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Glenn Lamar Taylor appeals from orders denying his motions for resentencing and reconsideration. 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 (2015-16).¹ We affirm the orders of the circuit court.

In 2011, Taylor was convicted following a jury trial of first-degree recklessly endangering safety and endangering safety by use of a dangerous weapon. The charges stemmed

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

from allegations that he fired a gun at a house that was occupied by people. Taylor also pled guilty to one count of possession of heroin as a second or subsequent offense. The circuit court sentenced him to a total of twelve years of initial confinement followed by six years of extended supervision.

In 2015, this court affirmed Taylor's convictions. *State v. Taylor*, No. 2014AP2913-CR, unpublished slip op. (WI App Oct. 6, 2015). In doing so, we rejected claims that (1) the jury's verdict finding Taylor guilty of first-degree recklessly endangering safety was not supported by sufficient evidence, (2) Taylor was entitled to postconviction discovery, (3) Taylor's trial counsel was ineffective, and (4) the interests of justice required us to exercise our discretionary authority to reverse under WIS. STAT. § 752.35.

Approximately six months later, Taylor filed a motion for resentencing. In it, he argued that his sentence was based on inaccurate information, namely an erroneous statement by the prosecutor that Taylor had been arrested in 2006 for shooting a fourteen-year-old girl. The circuit court denied the motion, concluding that the claim was barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because it had not been raised earlier. Taylor filed a motion for reconsideration, which the court also denied. This appeal follows.

On appeal, Taylor contends that the circuit court erred in denying his motions for resentencing and reconsideration. He renews his claim of inaccurate information and submits that it was not raised earlier due to ineffective assistance of counsel. See *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996) (recognizing that

ineffective assistance of counsel may constitute a sufficient reason for not raising an issue earlier).

“A defendant has a constitutionally protected due process right to be sentenced upon accurate information.” *State v. Tjepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. A defendant who seeks relief because the circuit court used inaccurate information must show that the information was inaccurate and that the court actually relied upon the inaccurate information at sentencing. *Id.*, ¶26. Whether a defendant has been denied this due process right is a question of law that we review de novo. *Id.*, ¶9.

Addressing Taylor’s argument on its merits, we are not persuaded that his sentence was based on inaccurate information. To begin, Taylor has not shown that the prosecutor’s statement was inaccurate. Indeed, the record reveals that Taylor was arrested for first-degree reckless injury on February 22, 2006. That may have been the case the prosecutor was referring to in her statement.² Moreover, the circuit court did not rely on the information about the fourteen-year-old girl in fashioning its sentence. Its comments were focused instead on Taylor’s conduct in the

² Taylor does not dispute the February 22, 2016 arrest. He told the presentence author that he did not recall the case.

case at hand, his criminal record, and the sheer number of arrests he had in his short life.³ Accordingly, we are satisfied that the court properly denied Taylor's motions.⁴

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals

³ By the time of sentencing, Taylor had accumulated twenty arrests in his twenty-two years of life.

⁴ As a final matter, Taylor suggests that his claim of inaccurate information constitutes a new factor. We need not consider this argument, as it was not raised in the circuit court. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. In any event, we are not persuaded that the alleged inaccurate information constitutes a new factor because (1) it is not new and (2) it could not have been unknowingly overlooked by Taylor, who as present when the prosecutor referred to it.