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DISTRICT II

June 21, 2017

To:

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

2016AP2010-CR State of Wisconsin v. Zachary I. Sundberg (L.C. #2015CF17)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Zachary I. Sundberg appeals his sentence as excessive on the ground that the circuit court erroneously exercised its discretion by considering charges that were dismissed but read in for purposes of sentencing. 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 As the court did not erroneously exercise its discretion by considering the read-in charges, we summarily affirm.

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

Sundberg pled no contest to second-degree sexual assault of a child, as a repeater. Two counts of causing a child over the age of thirteen to view sexual activity and a charge of sex with a child over the age of sixteen, all as a repeater, were dismissed and read in at sentencing. The court imposed a ten-year sentence: five years of initial confinement and five years of extended supervision.

While acknowledging that a court may consider read-in charges at sentencing, Sundberg argues that the court's assessment that the defendant committed "three egregious crimes" "crossed the line into impermissibly sentencing the defendant for crimes to which he did not plead." The circuit court acknowledged that it imposed a longer sentence due to the read-in offenses: "I gave him a longer sentence specifically because of those read-ins along with everything else."

A court is to consider read-ins when it imposes sentence. *State v. Sulla*, 2016 WI 46, ¶¶32-33, 369 Wis. 2d 225, 880 N.W.2d 659. Our supreme court has explained that a court may utilize read-ins as grounds to "increase the sentence up to the maximum that the defendant could receive for the conviction in exchange for the promise not to prosecute those additional offenses." *Id.*, ¶33 (quoting *State v. Frey*, 2012 WI 99, ¶68, 343 Wis. 2d 358, 817 N.W.2d 436). We summarily affirm as the court did not err in increasing Sundberg's sentence as a result of the read-ins. A court has the discretion to increase a sentence when read-ins are before it and the court did not err in doing so. Sundberg faced a maximum sentence of forty-six years' imprisonment on the charge of second-degree sexual assault of a child (as a repeater). *See* WIS. STAT. §§ 948.02(2), 939.50(3)(c), 939.62(1)(c). The court imposed a sentence of ten years.

IT IS ORDERED that the judgment and order 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