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December 21, 2017

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

2017AP671-CR

State of Wisconsin v. Angel Romero (L.C. # 2014CF5542)

Before Sherman, Blanchard and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Angel Romero appeals a judgment convicting him of hit and run involving death and an order denying his postconviction motion for sentence modification. After reviewing the record,

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm for the reasons discussed below.

Romero claims that he was denied due process because he was sentenced upon three pieces of inaccurate information. *See generally State v. Tiepelman*, 2006 WI 66, ¶¶9-27, 291 Wis. 2d 179, 717 N.W.2d 1 (a defendant has a constitutional right to be sentenced based upon accurate information). However, Romero has not met his burden of showing that any of the information presented at sentencing was inaccurate, much less that the circuit court relied upon such inaccurate information in determining the appropriate sentence. *See State v. Travis*, 2013 WI 38, ¶22, 347 Wis. 2d 142, 832 N.W.2d 491 (defendant must establish circuit court's reliance by clear and convincing evidence, after threshold showing that information was actually inaccurate).

First, Romero contends that the circuit court erroneously believed that Romero had struck two pedestrians with his car, rather than one. Romero points to a portion of the transcript where the circuit court stated:

[A witness] explains she saw a couple walking across the street further down the block. She was able to see that. And that you didn't stop, you didn't slow down, and you struck them. And that after striking them, and again, you didn't slow down, you just took off.

Aside from the likelihood that the circuit court's statement was merely paraphrasing a witness using a common colloquialism, it is clear from the rest of the circuit court's comments that it was well aware that Romero had only actually struck one person. In particular, the circuit court

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

discussed the impact that the offense had only on the family of the victim who was killed and did not mention any other person who had been struck.

Second, Romero contends that the circuit court erroneously believed that the victim's life could have been saved if Romero had stopped to render aid, when it is improbable that Romero could have done anything to save the victim's life since others at the scene immediately rendered aid and called 9-1-1. This contention is based upon the circuit court's statement that, "you had an opportunity maybe by stopping initially, calling for help, and so I consider it to be a very aggravated circumstance." Romero's interpretation of the circuit court's statement ignores its use of the words "opportunity" and "maybe." We read the court's comment to be focused on the fact that Romero failed to even *try* to help the victim when he had the opportunity to do so, not on whether any actions Romero could have taken would actually have saved the victim. There was nothing inaccurate in the circuit court's view that Romero's decision to flee the scene—without stopping to learn how badly the victim had been injured or whether there was anything that Romero could possibly do to help—was an indication of his character and an aggravating factor.

Third, Romero contends that the circuit court improperly speculated that Romero may have fled the scene because he was intoxicated at the time of the accident and feared taking a blood test, based upon Romero's past OWI conviction and his own attorney's "inexplicable" statement at the sentencing hearing that Romero "had a few drinks" the night of the accident. Romero asserts that his past OWI conviction was insufficient to allow the court to consider that he may have acted in conformity with prior conduct, and that his attorney's statement was unsupported by anything else in the record, including Romero's recorded statement.

However, assuming without deciding that the information about Romero having a few drinks was disclosed inadvertently or without Romero's permission does not mean it was inaccurate.² Romero did not, in either his motion to the circuit court or his brief to this court, assert that he was sober at the time of the accident, or present any other information that would show that he did not have a prior OWI conviction or that he did not have a few drinks on the night of the accident. To the contrary, Romero conceded in his motion that he could not show those factors to be "demonstrably false." In sum, the circuit court's concern that the reason Romero fled might have been that he was worried about what a blood test might show was a fair inference from the totality of the information before the court.

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals

² To the extent that Romero suggests that counsel may have violated his confidentiality, he has not developed a separate argument on appeal for why that would entitle him to resentencing. The sole issue Romero identifies in his brief is that the court relied upon inaccurate information.