



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 II

March 7, 2018

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Erin K. Deeley
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202

Patricia J. Hanson
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2017AP466-CR

State of Wisconsin v. Terrance V. Blair (L.C. #2015CF28)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Terrance V. Blair appeals from a judgment of conviction and an order denying his postconviction motion seeking sentencing relief. 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 Because we conclude that the circuit court's use of Blair's

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

Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk assessment at sentencing did not run afoul of *State v. Loomis*, 2016 WI 68, 371 Wis. 2d 235, 881 N.W.2d 749, and given that we are bound to follow the precedent of the Wisconsin Supreme Court, *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997), we affirm.

In 2015, pursuant to a plea agreement, Blair pled no contest to one count of resisting an officer causing soft tissue injury. The presentence investigation report (PSI) provided to the circuit court included a COMPAS risk assessment, which the circuit court briefly referenced at sentencing. Thereafter, our supreme court released its decision in *Loomis* regarding whether the circuit court's consideration of a COMPAS evaluation at sentencing violates a defendant's due process rights. The *Loomis* court concluded that the COMPAS assessment could be considered at sentencing, but circumscribed its use:

[A] sentencing court may consider a COMPAS risk assessment at sentencing subject to the following limitations. As recognized by the Department of Corrections, the PSI instructs that risk scores may not be used: (1) to determine whether an offender is incarcerated; or (2) to determine the severity of the sentence. Additionally, risk scores may not be used as the determinative factor in deciding whether an offender can be supervised safely and effectively in the community.

Importantly, a circuit court must explain the factors in addition to a COMPAS risk assessment that independently support the sentence imposed. A COMPAS risk assessment is only one of many factors that may be considered and weighed at sentencing.

Loomis, 371 Wis. 2d 235, ¶¶98-99 (footnote omitted).

Blair filed a postconviction motion alleging that *Loomis* was wrongly decided and that his case was distinguishable from *Loomis*. The circuit court denied the motion, stating it was

aware of the COMPAS tool's limitations at the time of Blair's sentencing and did not use or rely on the COMPAS assessment in determining Blair's sentence.² Blair appeals.

We summarily reject Blair's first argument, that *Loomis* was wrongly decided. As Blair acknowledges, only the supreme court can modify or overrule previous supreme court decisions. *Cook*, 208 Wis. 2d at 189-90. We are bound to follow *Loomis*.

Blair also maintains that the circuit court's use of the COMPAS assessment ran afoul of *Loomis*. Whether the circuit court's consideration of a COMPAS risk assessment violated the defendant's due process rights is a question of law which this court decides independently. *Loomis*, 371 Wis. 2d 235, ¶29. Here, Blair contends that the COMPAS warning in his PSI differed from the precise language approved in *Loomis* and was misleading and that this led the sentencing court to improperly use the COMPAS assessment to determine the severity of his sentence and whether incarceration was appropriate. We disagree.

Postconviction, the circuit court explained it was aware of the COMPAS tool's limitations at the time of Blair's sentencing and did not use or rely on the COMPAS assessment in determining Blair's sentence. The record bears this out. At sentencing, the court told Blair about the COMPAS assessment in his PSI and asked if he knew about actuarials. When Blair said he did not, the court explained what an actuary is and what one does. Though the circuit court told Blair how he scored on the COMPAS, it did not discuss those scores in explaining or

² The circuit court partially granted Blair's postconviction motion, finding him eligible for the Challenge Incarceration Program. In his brief, Blair asserts that due to a scrivener's error, the amended judgment incorrectly fails to reflect the original sentencing court's finding that he was eligible for the Substance Abuse Program. After Blair filed his brief, the circuit court entered a corrected judgment reflecting his eligibility for both programs. We therefore take no action on Blair's request for an order directing the circuit court clerk to correct the judgment.

pronouncing sentence. Rather, the court focused on factors such as Blair’s criminal history, his failures on community supervision, and his drug use. The sentencing court rejected probation as unduly deprecative of the offense, noting it was Blair’s “fourth resisting an officer,” and after finding that correctional treatment in a confined setting was necessary to keep Blair away from drugs since he had cut off his bracelet, absconded, and used drugs during community supervision.³

Upon the foregoing reasons,

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.

Sheila T. Reiff
Clerk of Court of Appeals

³ To the extent Blair asserts that the COMPAS warnings in his PSI were misleading, we agree with the State that any slight difference between the precise language used and that approved in *State v. Loomis*, 2016 WI 68, ¶¶17, 104, 371 Wis. 2d 235, 881 N.W.2d 749, was insignificant. Consistent with *Loomis*, the warning in Blair’s PSI report informed the circuit court that the risk score cannot determine the severity of the sentence or whether an offender is incarcerated. *Id.*, ¶¶17, 99. More importantly, the circuit court in the instant case did not use Blair’s COMPAS assessment in determining sentence, let alone for an impermissible purpose.