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**DISTRICT I**

October 7, 2019

To:

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

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2018AP2126-CR                      State of Wisconsin v. Branden L. Katzfey (L.C. # 2016CF5686)

Before Brash, P.J., Kessler and Dugan, 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).**

Branden Katzfey<sup>1</sup> appeals a judgment convicting him of first-degree reckless homicide and an order denying his postconviction motion. He argues that: (1) his sentence should be reduced to reflect the circuit court's intent to sentence him to a shorter term of imprisonment;

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<sup>1</sup> We refer to the co-defendants by their full names throughout the opinion for clarity's sake because two of the three co-defendants are brothers with the same surname.

and (2) he should not have received a longer sentence than a more culpable co-defendant. After review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>2</sup> We affirm.

Branden Katzfey and his girlfriend, Sarah Zakzesky, participated in brutally beating the victim, who died from his injuries. Branden Katzfey's brother, Devin Katzfey, was the instigator and primary actor in the crime. Devin Katzfey recorded portions of the beating and posted them on social media. All three co-defendants entered guilty pleas to first-degree reckless homicide, as a party to a crime.

The appellant, Branden Katzfey, was sentenced to twenty years of imprisonment, with thirteen years of initial confinement followed by seven years of extended supervision. Sarah Zakzesky was sentenced to eighteen years of imprisonment, with ten years of initial confinement followed by eight years of extended supervision. Devin Katzfey was sentenced to forty years of imprisonment, with twenty-seven years of initial confinement and thirteen years of extended supervision.

Branden Katzfey first argues that the initial confinement portion of his sentence should be modified to ten years, rather than thirteen years, because the circuit court indicated at the sentencing hearing that the State's recommendation was appropriate. The State recommended ten to twelve years of initial confinement. Katzfey contends that the circuit court's statement that the State's recommendation was appropriate shows that it intended to sentence him to ten years of initial confinement.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

This argument is meritless. The circuit court said: “The [c]ourt believes that the recommendation made by the [S]tate is certainly appropriate under the circumstances. The [c]ourt, *however*, because of your participation in it ... is going to impose a sentence of ... 13 years of confinement and seven years of extended supervision.” (Emphasis added.) In its postconviction decision, the circuit court explained that by using the word “*however*,” it intended to convey “that it felt that additional confinement time above what the State was recommending was necessary and appropriate due to the defendant’s participation in the beating and humiliation of the victim.” The circuit court pointed out that “not only did the defendant directly participate in the beating that ultimately resulted in the victim’s death, but he also participated in the victim’s humiliation during his last moments by urinating on him while his brother broadcast it on the victim’s own Snapchat account.” The circuit court explained that thirteen years of initial confinement was necessary to punish and deter Branden Katzfey’s conduct. Therefore, we reject Branden Katzfey’s argument that the circuit court should have reduced the initial confinement portion of his sentence.

Branden Katzfey next argues that the circuit court misused its discretion by imposing a longer sentence on him than Sarah Zakzesky. He argues that she was more culpable than he was because she more actively participated in beating the victim. He points out that the State made identical sentencing recommendations for them, which he says suggests the State believed that they were equally culpable.

The circuit court explained in its postconviction decision why it imposed a harsher sentence on Branden Katzfey than on Sarah Zakzesky. The circuit court said that while they both presented similar mitigating circumstances in that neither had a prior criminal record and both cooperated with police, Branden Katzfey had additional aggravating factors that worked

against him. The court explained that not only did he directly participate in the beating that ultimately resulted in the victim's death, but he also participated in humiliating the victim. The circuit court also pointed out that Sarah Zakzesky had informed the circuit court during her sentencing that she was afraid of both brothers and that Branden Katzfey had been physically violent with her. The circuit court explained that these factors, along with the remorse Sarah Zakzesky expressed at sentencing, mitigated the sentence it imposed on Sarah Zakzesky. Because the circuit court's exercise of discretion was reasonable, we reject Branden Katzfey's argument

Upon the foregoing,

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

*See* WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*