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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 IV

October 9, 2019

To:

Hon. Josann M. Reynolds
Circuit Court Judge
215 S. Hamilton St.
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Paul L. Barnett
Assistant District Attorney
Rm. 3000
215 S. Hamilton St.
Madison, WI 53703-3211

Michael C. Sanders
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jason R. Guetzlaff 428637
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2018AP564-CR

State of Wisconsin v. Jason R. Guetzlaff (L.C. # 2014CF2522)

Before Fitzpatrick, P.J., Blanchard and Kloppenburg, 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).

Jason Guetzlaff, pro se appellant, appeals his judgment of conviction and a circuit court order denying his motion for sentence modification. After reviewing the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We summarily affirm.

Guetzlaff pled guilty to and was convicted of one count of repeated sexual assault of a child, contrary to WIS. STAT. § 948.025(1)(e). He was sentenced to five years of initial confinement and ten years of extended supervision. Guetzlaff discharged his appointed attorney and filed a pro se motion, arguing that the following constituted new factors entitling him to sentence modification: (1) evidence that his treatment needs could be met in less time than the sentencing court believed; (2) evidence that he did not manipulate two women; and (3) evidence that bail jumping charges against him had been dismissed. The circuit court denied the motion without a hearing, concluding that Guetzlaff did not present a new factor warranting sentence modification. Guetzlaff now appeals.

In his appellant's brief, Guetzlaff does not address the circuit court's denial of his motion for sentence modification. Instead, Guetzlaff argues that he is entitled to plea withdrawal because he received ineffective assistance of counsel, resulting in an unknowing and involuntary plea. Guetzlaff did not raise his ineffective assistance claim in a motion for postconviction relief and, therefore, the issue is not properly before this court on appeal. *See State v. Gladney*, 120 Wis. 2d 486, 492, 355 N.W.2d 547 (1984).

Guetzlaff also requests that this court exercise its power of discretionary reversal in the interest of justice under WIS. STAT. § 752.35. However, he fails to make a persuasive argument that he is entitled to discretionary reversal and, instead, simply rephrases his ineffective

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

assistance of counsel claim. We conclude that there is no reason to exercise our discretionary authority under § 752.35 to reverse the judgment.

Notwithstanding Guetzlaff's failure to address the circuit court's reasons for denying his motion for sentence modification, the State addresses each of those reasons in its respondent's brief and asserts that the circuit court was correct in concluding that none of the factors alleged in Guetzlaff's motion qualified as new factors entitling him to sentence modification. Guetzlaff fails to dispute any of the State's arguments regarding sentence modification in his reply brief. A proposition asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). We deem Guetzlaff to have conceded the State's arguments regarding sentence modification and, on that basis, we conclude that he is not entitled to relief.

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

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

Sheila T. Reiff
Clerk of Court of Appeals