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**DISTRICT II**

May 12, 2021

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

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2019AP1028-CR                      State of Wisconsin v. Zurama M. Zeamer (L.C. #2017CF554)

Before Neubauer, C.J., Gundrum and Davis, 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).**

In this appeal from a judgment convicting her of knowingly operating a motor vehicle without a license, causing death, and from an order of the circuit court declining to vacate the restitution award, Zurama Zeamer challenges the circuit court's restitution award. 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 (2019-20).<sup>1</sup> Because we agree with the State that Zeamer is barred from challenging restitution on judicial estoppel grounds, we affirm.

Zeamer pled guilty to knowingly operating a motor vehicle without a license, causing death. WIS. STAT. § 343.05(3)(a), (5)(b)5.<sup>2</sup> Zeamer stipulated that the complaint provided the factual basis for the plea. The complaint included her admission that she was driving without a license when she was involved in the fatal crash. The State informed the court that it would be seeking restitution for the victim’s funeral expenses. At sentencing, Zeamer conceded her responsibility for funeral expenses. In arguing for probation, Zeamer’s counsel stated:

It looks like probation is—may be appropriate for some sort of, I guess, direction or control over the restitution issue which is true. We believe that if those were monies that the family paid out of insurance proceeds [for the funeral], that Ms. Zeamer should reimburse them for that. It’s going to take some time and we’re cognizant of that.

Zeamer also informed the court that she intended to seek expunction of her conviction.

The circuit court sentenced Zeamer to two years of probation with conditional jail time. The court found that restitution in the amount of the victim’s funeral expenses (\$8898) was

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> WISCONSIN STAT. § 343.05(3)(a) prohibits operation of a noncommercial vehicle in the absence of a valid operator’s license. Under WIS. STAT. § 343.05(5)(b)5, a person who violates § 343.05(3)(a), “knows at the time of the violation that he or she does not possess a valid operator’s license,” and, “in the course of the violation, causes the death of another person” is guilty of a Class H felony.

warranted. Finally, the court stated that it would look favorably at a petition to expunge if Zeamer successfully completed probation “[a]nd if restitution’s been made.”<sup>3</sup>

Postconviction, Zeamer sought to vacate the restitution award. Zeamer argued that her conduct, operating without a valid license, was not a substantial factor in the decedent’s death, the decedent was not a victim for purposes of restitution, and restitution was not appropriate because the decedent’s family could not have recovered funeral expenses as damages in a civil action. The State countered that WIS. STAT. § 973.20(4)<sup>4</sup> specifically authorizes restitution expenses “[i]f a crime considered at sentencing resulted in death,” and Zeamer pled guilty based on the facts alleged in the complaint (she lacked a valid driver’s license at the time of the crash and the victim died). The circuit court agreed with the State that restitution was appropriate under § 973.20(4). Zeamer appeals.

We agree with the State that Zeamer’s challenge to restitution is barred on grounds of judicial estoppel. The equitable doctrine of judicial estoppel is intended to prevent a litigant from asserting inconsistent positions in the same legal proceeding. *State v. Petty*, 201 Wis. 2d 337, 347, 548 N.W.2d 817 (1996). Whether the elements of judicial estoppel are satisfied presents a question of law. *See State v. Harrison*, 2020 WI 35, ¶21, 391 Wis. 2d 161, 942

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<sup>3</sup> We take judicial notice that Zeamer’s WIS. STAT. § 973.015(1m) petition to expunge was granted in July 2020, and the restitution award was converted to a civil judgment. *See Schinner v. Gundrum*, 2013 WI 71, ¶25 n.10, 349 Wis. 2d 529, 833 N.W.2d 685 (court refers to Consolidated Court Automation Program records); *State v. Vesper*, 2018 WI App 31, ¶17 n. 4, 382 Wis. 2d 207, 912 N.W.2d 418 (judicial notice of public records). The circuit court’s order expunging Zeamer’s conviction is not before this court on review.

<sup>4</sup> WISCONSIN STAT. § 973.20(4) provides “[i]f a crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services ....”

N.W.2d 310. Based on the record before this court, the elements of judicial estoppel are satisfied here: Zeamer’s challenge to the restitution order is clearly inconsistent with her prior position that restitution would be imposed for the victim’s funeral expenses, she conceded liability for the victim’s funeral expenses, and the facts have not changed between Zeamer’s plea and sentence and this appeal. *See id.*, ¶27 (elements of judicial estoppel discussed).

Even if we were to reach the merits of Zeamer’s challenge to restitution, we would reject it. Zeamer’s plea was premised on the factual basis in the complaint, the decedent identified in that complaint was the victim for purposes of WIS. STAT. § 973.20(1r) and (4) and WIS. STAT. § 950.02(4)(a)4.a. *See also State v. Gribble*, 2001 WI App 227, ¶¶71, 75, 248 Wis. 2d 409, 636 N.W.2d 488 (for purposes of restitution, a family member of the crime victim is also deemed a victim). Funeral expenses are an appropriate component of a restitution award. Sec. 973.20(4).<sup>5</sup>

We turn to the effect on this court’s record, docket, and opinion of the circuit court’s order expunging Zeamer’s conviction.<sup>6</sup> We asked the parties to address this issue, and they have done so. The State argues that this court has authority to seal the appellate docket, all filings in this court and this opinion to give effect to the circuit court’s order expunging the conviction. Zeamer argues that this court lacks such authority. Because Zeamer does not ask this court to take action in relation to her expunged conviction, we address this issue no further.

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<sup>5</sup> While we have considered all of the arguments in the briefs, we only discuss those arguments that are necessary to our decision. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (we are not bound to the manner in which the parties have structured or framed the issues). Arguments not mentioned are deemed rejected. *Id.*

<sup>6</sup> Pursuant to WIS. STAT. § 973.015(1m), the circuit court expunged Zeamer’s conviction. “[E]xpunction of a conviction merely deletes the evidence of the underlying conviction from court records.” *State v. Braunschweig*, 2018 WI 113, ¶22, 384 Wis. 2d 742, 921 N.W.2d 199.

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.

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