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DISTRICT III

August 31, 2021

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

2020AP1083-CR State of Wisconsin v. Jeffrey R. Froemel
(L. C. No. 2016CF201)

Before Stark, P.J., Hruz and Nashold, 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).

Jeffrey Froemel appeals from sentences imposed on his convictions for child sexual assault and child enticement. He asserts that he is entitled to resentencing because the circuit court relied upon inaccurate information and imposed excessive sentences. 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).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

At Froemel's jury trial, the victim testified that Froemel sexually assaulted her on multiple occasions from the time she was five until she was eight years old. On cross-examination, she was asked about statements she made during an interview years earlier, and why her description of events at trial differed from her earlier statements. The victim testified that she was only "13 at the time," and now that she was eighteen years old, she could explain it better, after years of counseling.

At sentencing, the circuit court stated: "But that struck me at the trial that [the victim] basically gave what I thought was a credible, solid explanation as to why you have a child subjected to this who doesn't say anything, who denies it when questioned. And then all of a sudden as she gets older and becomes more self[-]aware as to what happened and what her place in this world is, can understand more and be able to express what took place." The court ultimately imposed two concurrent sentences, consisting of forty years' initial confinement and twenty years' extended supervision on the sexual assault conviction and fifteen years' initial confinement and ten years' extended supervision on the enticement conviction.

Froemel filed a postconviction motion challenging his sentences, claiming that the circuit court erred by mischaracterizing the victim's testimony on cross-examination regarding the discrepancies in her accounts of the assaults as explaining why the victim delayed in reporting them. Froemel also argued that his trial counsel was ineffective for not objecting to the court's sentencing remarks. The court denied the postconviction motion after a hearing.

Froemel titles his argument on appeal as challenging the circuit court's sentencing discretion by imposing an excessive sentence. However, Froemel fails to develop an argument that the sentences imposed were excessive, and the issue therefore does not warrant further

consideration. *See* ***M.C.I., Inc v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). In any event, we note the court considered the proper sentencing factors, including Froemel's character, the seriousness of the offenses, and the need to protect the public. *See* ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The court also imposed a sixty-year bifurcated sentence on the sexual assault charge, which was well within the eighty-five-year statutory maximum, and therefore, is presumptively neither harsh nor excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507.

Froemel's argument can be more accurately characterized as alleging that his sentences were based on inaccurate information, but his claim fails under this theory as well. Froemel contends the sentencing transcript reveals that the circuit court's sentencing statement substantially took the following form: "'[W]hy didn't you come forward earlier? Why is it just now?' And I think her response, and I'm paraphrasing, was basically I have grown up. I understand what happened now and I know that it's wrong so I came forward."

Froemel insists this exchange "simply did not happen," and it was "far more limited in scope." Froemel also argues the circuit court burnished its sentencing comments "with matters outside the record," referencing its recollection of the victim's testimony and such things as "the inflection, the emotion, the look in her eye." According to Froemel, there was "nothing in this exchange between the alleged victim and counsel that asked, as the court remembered it being asked, 'why didn't you come forward earlier? Why is it just now?'" Moreover, Froemel contends there was nothing in the victim's response that "in any way, shape, or form could be said to constitute … a process of maturation, [or] 'a credible, solid explanation as to why you have a child subjected to this who doesn't say anything, who denies it when questioned.'" From

this contention, Froemel asserts the court improperly relied on evidence unsupported by the record.

Our review of the record demonstrates that the circuit court's discussion of the victim's testimony during sentencing was accurate, brief and isolated. The record shows that the court discussed the victim's cross-examination testimony in order to make the point that the victim testified very credibly about why her trial testimony differed from her earlier statements regarding the sexual assaults.

The victim was asked on cross-examination why her story had changed over the years. She explained: "Again I was 13 at the time. I've went through a lot of counseling. I went through a lot of stuff. It affected me a lot. So, I mean, I guess now I'm better wording it. I'm speaking more. I have grown a lot since it happened." This is the exchange the circuit court referenced at sentencing.

As the circuit court explained at the postconviction motion hearing, it viewed the victim's testimony as explaining why her trial testimony differed from the account she gave years earlier. The court found her explanation—that she was older and better able to talk about the assaults after years of counseling—to be highly credible. We conclude the court reasonably characterized the victim's testimony. A mere difference in opinion about the meaning of a witness's testimony does not constitute a factual inaccuracy. *See* ***State v. Slagoski***, 2001 WI App 112, ¶9, 244 Wis. 2d 49, 629 N.W.2d 50.

Furthermore, Froemel does not argue that the circuit court's comments regarding the victim's credibility formed part of the basis of his sentences. *See* ***State v. Travis***, 2013 WI 38, ¶28, 347 Wis. 2d 142, 832 N.W.2d 491. The court referenced the victim's cross-examination

testimony at the beginning of its sentencing decision when it acknowledged the hardship the victim has faced as a result of Froemel's crimes. The court made these comments during a summary of the testimony heard at trial, before the court began considering the sentencing objectives. The sentencing transcript shows that the disputed line of cross-examination was not again considered once the court turned its attention to the sentencing objectives.

Froemel has failed in his burden to show that the information was inaccurate and that actual reliance on the inaccurate information formed part of the basis for his sentences. ***Id.*** He is not entitled to resentencing.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* 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