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**DISTRICT II**

October 6, 2021

To:

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Winnebago County  
Electronic Notice

Matt Borkovec  
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Christian A. Gossett  
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Eric Michael Muellenbach  
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You are hereby notified that the Court has entered the following opinion and order:

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2020AP1700-CR      State of Wisconsin v. Angel I. Adorno (L.C. #2019CF192)

Before Gundrum, P.J., Reilly and Grogan, 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).**

Angel I. Adorno appeals a judgment of conviction for third-degree sexual assault and an order denying his motion for resentencing or sentence modification. He argues that he is exempt from the reporting requirements for sex offenders and that therefore the circuit court erred by denying his motion. 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> We affirm.

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

Adorno was charged with first-degree sexual assault of a child under age sixteen by use or threat of force or violence. In the early morning hours of February 3, 2019, the victim reported to police that Adorno had forced sexual intercourse with her the previous night as she resisted and told him no. At the time of the assault, Adorno was eighteen years old, and the victim was age fourteen. Adorno agreed to plead no contest to a reduced charge of third-degree sexual assault. The circuit court accepted Adorno's plea following a colloquy in which Adorno stated the intercourse was nonconsensual "[t]o the extent ... that she wasn't of the age of majority."

The circuit court imposed a sentence consisting of four years' initial confinement and four years' extended supervision, concurrent to any other sentence. The court also ordered Adorno to comply with the sex offender registration requirements, to which Adorno objected. After a discussion, defense counsel ultimately agreed that Adorno did not qualify for an exception to the registration requirement under WIS. STAT. § 301.45(1m)(a)2m. Adorno obtained postconviction counsel and filed a motion for plea withdrawal based on ineffective assistance of counsel and lack of voluntariness, or, in the alternative, for resentencing or sentence modification. The circuit court denied the motion.

Adorno argues the circuit court erred when it denied his motion for resentencing or sentence modification. His argument is based on his perception that the court mistakenly concluded it had no authority to except him from the sex offender registration requirement. The crux of Adorno's argument appears to be that the court did, in fact, have the discretion under *State v. Parmley*, 2010 WI App 79, ¶10, 325 Wis. 2d 769, 785 N.W.2d 655, to except him from the registration requirement if it concluded that "factually consensual contact has occurred."

Adorno argues this purported misunderstanding of the circuit court’s authority was legal error that constitutes an improper sentencing factor.

Adorno is wrong as he conflates the two statutory exceptions to the registration requirement and misinterprets *Parmley*. Because Adorno was convicted of third-degree sexual assault under WIS. STAT. § 940.225(3)(a), the circuit court was required to order him to comply with the reporting requirements contained in WIS. STAT. § 301.45 “unless the court determines, after a hearing on a motion made by the person, that the person is not required to comply under s. 301.45(1m).” *See* WIS. STAT. § 973.048(2m). Section 301.45(1m), in turn, sets forth two exceptions to the registration requirement, one that applies to persons who have committed or participated in the sexual assault of a child under various circumstances, *see* § 301.45(1m)(a)1m.a., and one that applies to persons who have committed or participated in the third-degree sexual assault of another person, *see* § 301.45(1m)(a)2m.a.

Adorno agrees that because his victim had not yet reached fifteen years of age, he does not qualify for the registration exception applicable to his offense under WIS. STAT. § 301.45(1m)(a)2m. Rather, he argues that he is exempt because he would qualify under the exception for the “harsher” offense of sexual assault of a child, and under those circumstances it would be unfair or against the interest of justice to require him to register. But Adorno does not qualify under that provision; he was not convicted of sexual assault of a child under WIS. STAT. §§ 948.02, 948.025, or 948.085, a necessary prerequisite. *See* § 301.45(1m)(a)1m.a. There were no exceptions under which the circuit court could excuse Adorno from the reporting requirements.

What Adorno tacitly requests is that this court substitute the WIS. STAT. § 301.45(1m)(a)2m.b requirement that the victim be at least fifteen years of age with the § 301.45(1m)(a)1m.c requirement that the perpetrator “was not more than 4 years older or not more than 4 years younger than the child.”<sup>2</sup> Courts do not mix and match statutory provisions in this way, nor does *Parmley* provide a basis to do so. Adorno misconstrues *Parmley*’s statement that “the circuit court has the discretion to excuse the offender from registration if it determines that factually consensual contact has occurred, the offender presents no danger to the public, and the court is satisfied that the purposes of § 301.45 are not undermined by excusing registration.” *Parmley*, 325 Wis. 2d 769, ¶10 (quoting *State v. Joseph E.G.*, 2001 WI App 29, ¶11, 240 Wis. 2d 481, 623 N.W.2d 137). Both *Parmley* and *Joseph E.G.* addressed the registration exception under § 301.45(1m)(a)1m for persons convicted of sexual assault of a child. See *Parmley*, 325 Wis. 2d 769, ¶8; *Joseph E.G.*, 240 Wis. 2d 481, ¶10. *Parmley* did not create an extra-statutory exception to the registration requirement that can apply whenever consensual sexual intercourse has occurred.

Moreover, despite Adorno’s protestations to the contrary, he *was* convicted of a crime involving a lack of consent. Third-degree sexual assault criminalizes nonconsensual sexual intercourse with a person. See WIS. STAT. § 940.225(3)(a); cf. *Joseph E.G.*, 240 Wis. 2d 481, ¶12 (“Because the restraint or confinement prohibited by § 940.30 must be done without the victim’s consent, willing participation can never occur.”). Adorno responds that he has always maintained the victim in fact consented to the sexual intercourse and that his stipulation to there being a lack of consent was based purely on his belief that the victim was incapable of

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<sup>2</sup> Adorno is approximately three years and four months older than the victim.

consenting given her age. As explained above, this does not change the crime to which he pleaded. Further, this assertion is an attempt to raise issues regarding the voluntariness of his plea and the constitutional effectiveness of his attorney in relation to those proceedings—arguments he raised below but has abandoned on appeal by failing to develop them in any fashion that would permit meaningful review. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 493, 588 N.W.2d 285 (Ct. App. 1998) (“[W]hen a party fails to argue an issue in its main appeal brief, the appellate court may treat the issue as having been abandoned, even though the issue was presented to the trial court.”).

Therefore,

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*