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**DISTRICT I**

June 14, 2022

To:

Hon. Jeffrey A. Wagner  
Circuit Court Judge  
Electronic Notice

David Malkus  
Assistant State Public Defender  
Electronic Notice

George Christenson  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Anne Christenson Murphy  
Electronic Notice

John D. Flynn  
Electronic Notice

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

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2021AP953-CR

State of Wisconsin v. Robert M. Matagi (L.C. # 2019CF1623)

Before Brash, C.J., Dugan and White, 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).**

Robert M. Matagi appeals a judgment of conviction, following a no contest plea, to one count of hit and run involving death. He also appeals from the postconviction order denying his motion for resentencing. Upon our review of the briefs and record, we conclude at conference

that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> We summarily affirm.

On April 15, 2019, the State charged Matagi with one count of second-degree reckless homicide, one count of fleeing or eluding an officer resulting in the death of another, and one count of hit and run involving death. According to the criminal complaint, on April 11, 2019, a Milwaukee County Sheriff's deputy noticed the driver of a red Chrysler driving recklessly and at excessive speeds on a Milwaukee expressway. The driver exited the expressway, continued to drive at excessive speeds, and ran a red light, ultimately crashing into two vehicles. One of the other drivers, P.C.O., died from his injuries. The driver of the Chrysler, later identified as Matagi, fled the scene on foot.

Matagi agreed to plead no contest to one count of hit and run resulting in death. The State recommended twenty-three years of imprisonment, with fifteen years of initial confinement and eight years of extended supervision, and agreed to dismiss and read in the other counts. Matagi entered his plea and the court found him guilty of hit and run resulting in death.

At sentencing, the State detailed the facts leading up to the crash, including the fact that Matagi was travelling at eighty-five miles per hour in a thirty-five mile per hour zone and that he attempted to flee the scene. The State also noted that the day before the hit and run, Matagi was involved in, and later charged with, an armed robbery in La Crosse, during which Matagi “point[ed] a silver gun at people,” “[p]istol whipped” an individual, and stole cash and a cell phone. One of Matagi’s passengers in the Milwaukee crash was “his co-defendant from that La

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

Crosse robbery allegation,” and the other was Matagi’s girlfriend, who was caught “trying to dispose of the silver revolver in the gas station bathroom.” Matagi admitted fleeing because he had a gun and did not “want to go to jail,” but the State argued that Matagi likely fled because “he was aware [of] this eventual allegation from La Crosse” of the armed robbery. Matagi did not have a driver’s license, had three tickets for operating without a license, and at the time of this crash, his blood draw was positive for THC.

In rendering its decision, the sentencing court reiterated the facts of the case, discussing the dangerousness of Matagi’s conduct and the loss of life that resulted. The sentencing court acknowledged the number of people victimized by Matagi’s conduct, including P.C.O., the driver of the other vehicle, and Matagi’s passengers. The sentencing court noted that Matagi not only victimized those five individuals, but also that he had “two alleged counts of armed robbery ... within 24 hours” of this incident, which made “seven victims within 24 hours, allegedly, on the armed robberies.” The court also discussed Matagi’s character. Ultimately, the sentencing court imposed the maximum sentence of twenty-five years of imprisonment, bifurcated into fifteen years of initial confinement and ten years of extended supervision. The sentencing court also made Matagi eligible for earned release and boot camp.

Matagi filed a postconviction motion for resentencing, alleging that he was sentenced based on inaccurate information; specifically, the sentencing court’s statement that “Matagi had committed two armed robberies within 24 hours of his criminal traffic offenses,” when Matagi had actually only been charged with one count of armed robbery. Matagi argued that the sentencing court relied on the inaccurate information in assessing how much of a threat Matagi posed to the community. The postconviction court denied the motion without a hearing. This appeal follows.

On appeal, Matagi maintains that he is entitled to resentencing because the sentencing court relied upon inaccurate information. We disagree.

We review a claim that a sentencing error denied a defendant due process independently, but benefitting from the circuit court's analysis. See *State v. Travis*, 2013 WI 38, ¶20, 347 Wis.2d 142, 832 N.W.2d 491. In raising a due process claim seeking resentencing based on inaccurate information, a defendant must make two showings. First, the defendant must show the information was inaccurate. *Id.*, ¶21. Second, the defendant must show by clear and convincing evidence that the court actually relied upon the inaccurate information in the sentencing. *Id.*, ¶22. If the defendant makes these two showings, the burden shifts to the State to show beyond a reasonable doubt that the error was harmless. *Id.*, ¶23. "The State can meet its burden to prove harmless error by demonstrating that the sentencing court would have imposed the same sentence absent the error." *Id.*, ¶73.

We conclude that any alleged error by the sentencing court was harmless. In reviewing the sentencing transcript, it is clear that the La Crosse robbery was not the sentencing court's primary focus when rendering its decision; rather, the court was focused primarily on the dangerousness of Matagi's conduct, as well as those victimized by that conduct. While Matagi contends that the sentencing court miscalculated the number of victims by stating that Matagi committed two armed robberies, the transcript is clear that the court was more disturbed by the conduct that led to the victimization. The sentencing court discussed the "aggravated" nature of the vehicular homicide, noting the high speeds and the fact that Matagi attempted to flee from the scene. The sentencing court also discussed Matagi's character and the need for deterrence. In short, it is clear that the sentencing court would have issued the same decision regardless of the alleged error. Indeed, the postconviction court said as much in its decision, stating that

regardless of whether Matagi was charged with one or two armed robberies, the vehicular homicide was so egregious that “there is no probability under the sun that the court would have imposed anything less than the maximum sentence in this case.”

For the foregoing reasons, we affirm the judgment of conviction and the order denying resentencing.

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.

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