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DISTRICT II

November 2, 2022

To:

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Circuit Court Judge
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Circuit Court Judge
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Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2021AP2085-CR

State of Wisconsin v. Cara L. Zech (L.C. #2018CF793)

Before Gundrum, P.J., Neubauer 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).

Cara L. Zech appeals from a postconviction order denying her request for resentencing. She contends the circuit court erred in denying her motion, which alleged the sentencing court relied on inaccurate information. 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).¹ We affirm.

Zech pled no contest to first-degree reckless homicide/delivery of drugs as party to a crime,² following the heroin-overdose death of the victim. The circuit court sentenced Zech to nine years' initial confinement (IC).³ At Zech's sentencing, before the court imposed Zech's sentence, the prosecutor told the sentencing court that he had agreed to make a joint sentencing recommendation of eight years' IC for one of Zech's codefendants, Anthony Buechel, whose sentencing would occur later that same day with a different judge. At Buechel's sentencing, the prosecutor did in fact recommend that Buechel be sentenced to eight years' IC. Buechel's judge, however, did not follow the recommendation and instead sentenced Buechel to seven years' IC.

Zech believes that because Buechel's actual sentence was seven years' IC instead of the recommended eight years, this means she was sentenced based on inaccurate information, and she should be resentenced. We disagree. "[A] defendant is entitled to resentencing if the defendant meets a two-pronged test: (A) the defendant shows that the information at the original sentencing was inaccurate; and (B) the defendant shows that the court actually relied on the inaccurate information at sentencing." *State v. Travis*, 2013 WI 38, ¶21, 347 Wis. 2d 142, 832 N.W.2d 491. A defendant must prove both prongs of this test by clear and convincing evidence. *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423. A defendant's right

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

² *See* WIS. STAT. §§ 940.02(2)(a), 939.05.

³ Zech's sentence also included ten years of extended supervision, but because her challenge involves only the initial confinement portion of the sentence, we do not discuss the extended-supervision portion of the relevant sentence.

to be sentenced based on accurate information presents a constitutional issue we review de novo. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. However, a circuit court’s “findings of historical or evidentiary facts are reviewed under the clearly erroneous standard.” *State v. David J.K.*, 190 Wis. 2d 726, 738, 528 N.W.2d 434 (Ct. App. 1994).

The postconviction court found that the eight-year joint recommendation for Buechel’s sentence was *not* inaccurate information because the prosecutor did in fact make the eight-year recommendation at Buechel’s sentencing. Thus, when the prosecutor told Zech’s sentencing court about Buechel’s recommended sentence, he shared *accurate* information. We agree. Sentencing courts know that sentencing recommendations are just that—recommendations—and that a sentencing court often imposes a sentence different than the recommendation. The fact that Buechel’s sentencing court imposed a sentence different from what was recommended does not somehow transform the true statement made at Zech’s sentencing into inaccurate information. Zech failed to prove that she was sentenced based on inaccurate information.⁴

⁴ Because Zech failed to show the information was inaccurate, we need not address whether the sentencing court actually relied on the challenged information. See *State v. Denny*, 2017 WI 17, ¶81 n.21, 373 Wis. 2d 390, 891 N.W.2d 144 (“Issues that are not dispositive need not be addressed.” (citations omitted)).

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to
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