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**DISTRICT III**

December 29, 2022

To:

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Scott P. Olson 225559  
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Plymouth, WI 53073-0282

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

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2021AP250

State of Wisconsin v. Scott P. Olson (L. C. No. 2014CF93)

Before Stark, P.J., Hruz and Gill, 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).**

Scott Olson, pro se, appeals from an order denying his motion for postconviction relief from a judgment of conviction entered in 2015. Olson contends that he was sentenced based upon inaccurate information relating to child pornography found on his computer, that his trial counsel provided ineffective assistance by failing to object to the allegedly inaccurate information, and that the circuit court improperly failed to consider placing him on probation.

After reviewing 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.

Olson was charged with second-degree reckless endangerment, attempting to flee a traffic officer, and tampering with a global positioning system (GPS) tracking device, each as a repeat offender. The charges arose out of an incident in which Olson, who was on supervision as a registered sex offender, cut off his GPS monitor and led police, who were attempting to arrest him for an alleged probation violation, on a high-speed chase with a minor child in the vehicle. Olson eventually pled no contest to the counts of reckless endangerment and attempting to elude a traffic officer, and the circuit court ordered a presentence investigation report (PSI).

Relevant to this appeal, one section of the PSI stated:

[T]he Department of Corrections was notified by law enforcement that images of child pornography were alleged to be on a computer owned by the defendant. The defendant cut off his GPS equipment the following day. The computer was turned over to the police by his girlfriend and her friend; the computer was later searched by law enforcement and [revealed images] of young girls (around age 10) [who] were naked and posed exposing their vaginas.

Another section of the PSI setting forth the offender's version of events stated, "The defendant admits to cutting off his GPS unit on the advice of his girlfriend. He was aware her friend gave a statement to police and was concerned of being placed in custody for unwarranted allegations [of] child pornography."

At the sentencing hearing, the prosecutor recounted the information about the child pornography found on Olson's computer as follows:

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

His computer had been confiscated by the police because there was a concern and later there was located child pornography on that computer, and so he cut his bracelet off and ran, and it was about a month later that an officer saw him, knowing that there was a warrant, and tried to conduct the traffic stop here in this case.

Olson’s trial counsel subsequently “clarified” that:

[A]s to the computer child pornography allegations, at this point those are, at best, allegations, and [the prosecutor] did not mention them in great detail so I won’t either other than to say that—and I did mention ... in the PSI that—that his agent did have her own suspicions that those might not have been his images. We’re not here to try that case, so we won’t say anything more about that other than I don’t think it should factor very heavily—personally, I don’t think it should factor at all into—into the decision here today.

The circuit court began its sentencing comments by noting that the prosecutor had “accurately set forth the events that led to the charges and the conviction in this matter,” although it never specifically mentioned that child pornography had been found on Olson’s computer. As to whether probation would be appropriate, the court observed that Olson had absconded from supervision, making it clear that he could not be supervised in the community.

As a threshold matter, the State contends that Olson forfeited his first claim that he was sentenced based upon inaccurate information by failing to object to the allegedly inaccurate information at the sentencing hearing. That appears to be the case. We note, however, that the first step in deciding Olson’s second claim of ineffective assistance of counsel would be to determine whether there was inaccurate information presented at sentencing to which Olson’s trial counsel should have objected. *See generally State v. Sholar*, 2018 WI 53, ¶32, 381 Wis. 2d 560, 912 N.W.2d 89 (requiring a defendant raising a claim of ineffective assistance of counsel to first establish deficient performance by counsel and to then demonstrate prejudice resulting from

that deficient performance). Therefore, we will review the question of whether Olson was sentenced based upon inaccurate information in the context of the ineffective assistance claim.

Here, Olson does not dispute that he either owned or shared possession of a laptop upon which child pornography was found. Olson contends that: (1) he was not the person who downloaded the images in question; and (2) the discovery of the child pornography was not the actual reason he absconded.

As to the first point, neither the PSI nor the prosecutor asserted that Olson was the person who downloaded the images. Moreover, both the PSI and defense counsel advised the circuit court that Olson claimed a third person had downloaded the images. Therefore, the court was not provided with inaccurate information that Olson had downloaded the images.

As to the second point, Olson's current assertion conflicts with his prior statement to the PSI author that he cut off his GPS monitor because he was concerned about being returned to custody based upon "unwarranted allegations." To the extent that Olson may now be challenging the PSI author's attribution of that statement to Olson, we note that we do not deem information to be "inaccurate" merely because it was contested. Rather, the defendant must demonstrate the information was "extensively and materially false." *State v. Travis*, 2013 WI 38, ¶18, 347 Wis. 2d 142, 832 N.W.2d 491. Even without Olson's statement to the PSI author, the timing of Olson's absconding the day after his computer was turned over to police supports a fair inference that Olson's flight was prompted by his concern that the discovery of child pornography on the computer would lead to revocation proceedings. The circuit court was not obliged to accept Olson's self-serving assertion that he fled for some other reason, and Olson has

failed to present any other objective evidence to demonstrate that the information provided to the court at sentencing from the PSI was false.

Furthermore, Olson has not demonstrated that the circuit court actually relied at sentencing upon any information provided about the reason Olson absconded from supervision. Actual reliance requires a showing that the court gave explicit attention or consideration to the information, such that it “formed part of the basis for the sentence.” *State v. Tiepelman*, 2006 WI 66, ¶14, 291 Wis. 2d 179, 717 N.W.2d 1 (citation omitted). Here, the court’s discussion at sentencing focused on Olson’s extensive criminal history and the danger posed to the public by Olson’s reckless high-speed chase. The court made no mention of the child pornography found on Olson’s computer, much less any suggestion that it was the reason for Olson’s flight. Therefore, Olson was not sentenced based on inaccurate information regarding why he absconded, even if the information provided by the PSI and prosecutor on that point was inaccurate. Because Olson’s claim related to being sentenced on inaccurate information fails, so must his ineffective assistance of counsel claim.

Finally, Olson’s third claim that the circuit court erroneously exercised its discretion by failing to consider whether to impose probation is procedurally barred because it is outside the scope of a postconviction motion filed under WIS. STAT. § 974.06. Claims raised pursuant to that statute are limited to constitutional or jurisdictional issues. *See* § 974.06(1). While Olson could have raised a challenge to the court’s exercise of sentencing discretion in a direct appeal or a postconviction motion filed under WIS. STAT. § 973.19(1)(a), the time to do so has long since expired. *See State v. Noll*, 2002 WI App 273, ¶10, 258 Wis. 2d 573, 653 N.W.2d 895 (explaining that § 973.19(1)(a) is the proper mechanism to assert an erroneous exercise of discretion based on excessiveness, undue harshness, or unconscionability). Moreover, even if

Olson's claim that the court failed to consider probation was not barred, it is directly contradicted by the record, in which the court explicitly stated that it would not impose probation because Olson had already absconded from supervision.

Therefore,

IT IS ORDERED that the postconviction order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*