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DISTRICT IV

May 4, 2023

To:

Hon. Gregory J. Potter
Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

Kimberly Stimac
Clerk of Circuit Court
Wood County Courthouse
Electronic Notice

Jeremy Newman
Electronic Notice

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

2022AP415-CR State of Wisconsin v. Alvaro Corral, Jr. (L.C. # 2020CF604)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, 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).

Alvaro Corral, Jr., appeals a judgment of conviction and an order denying Corral's postconviction motion for resentencing. 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 (2021-22).¹ We summarily affirm.

On September 11, 2020, Corral was charged with multiple counts of sexual assault that were alleged to have occurred between January and April of 2020. On September 18, 2020,

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Corral was sentenced in a separate case for an August 2019 sexual assault. In January 2021, Corral pled guilty in this case to one count of sexual assault that occurred in January 2020, and the remaining counts were dismissed and read in for sentencing purposes. In March 2021, Corral was sentenced to eight years of initial confinement and ten years of extended supervision.

Corral moved for resentencing, arguing that the sentencing court relied on inaccurate information when it stated:

What's also disturbing about this is, first of all, you had a prior sexual assault in August of 2019. You were convicted of that. That dealt with you having sexual intercourse with someone who was unconscious. Then you turn around and very -- within months start committing these sexual assaults as well.

Corral argued that the court's statement indicated the court's inaccurate belief that Corral had already been convicted and sentenced for the August 2019 sexual assault when he committed the January 2020 sexual assault. The court denied the motion.

“A defendant has a constitutionally protected due process right to be sentenced upon accurate information.” *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. “The defendant requesting resentencing must prove, by clear and convincing evidence, both that the information is inaccurate and that the trial court relied upon it.” *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423. “[C]lear and convincing” means “highly probable or reasonably certain.” *State v. Harris*, 2010 WI 79, ¶35, 326 Wis. 2d 685, 786 N.W.2d 409. Information is inaccurate if it is “extensively and materially false.” *See State v. Travis*, 2013 WI 38, ¶18, 347 Wis. 2d 142, 832 N.W.2d 491. A sentencing court actually relied on the inaccurate information if it gave “‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *Tiepelman*, 291 Wis. 2d

179, ¶14 (citation omitted). We independently review a claim that a defendant was sentenced based on inaccurate information. *Id.*, ¶9.

Here, Corral argues that the inaccurate information at sentencing was the circuit court’s comment that Corral “had a prior sexual assault in August of 2019. You were convicted of that.... Then you turn around and very -- within months start committing these sexual assaults as well.” Corral argues that the court’s statement was inaccurate because Corral had not been *convicted* of the August 2019 sexual assault before committing the offense in this case in January 2020. Corral argues that the common understanding of a defendant having a “prior” conviction is that the defendant was convicted of the prior offense before committing the new offense, which would be relevant to the seriousness of the offense and the defendant’s dangerousness and amenability to treatment. Corral also points to the court’s statements at the postconviction motion hearing that it “poorly stated” Corral’s history and had “made [an] error” or used “poor judgment” in its wording.² Corral argues that “the court’s admissions tip the scales in Mr. Corral’s favor with regard to whether there was inaccurate information at sentencing.” We are not persuaded that the court’s sentencing comments were inaccurate.

We conclude that it is most reasonable to read the circuit court’s comment that Corral was convicted of the August 2019 sexual assault as an aside, simply noting that Corral was ultimately convicted of that offense within the context of the court’s statement that Corral began committing the sexual assaults in this case in January 2020 within months of *committing* the

² Corral acknowledges that the court’s statements were made in the context of explaining that it did, in fact, understand that Corral had not been convicted of the August 2019 offense when he committed the current offense.

August 2019 sexual assault. This common sense reading is supported by the court’s statement at the beginning of its sentencing comments that it had reviewed the presentence investigation report, which lists Corral’s conviction for the August 2019 sexual assault as having occurred in August 2020. It is also supported by the court’s statement at the postconviction motion hearing that it was familiar with the sequence of events in both cases because it also handled Corral’s August 2019 sexual assault case “throughout.” Thus, in context, the court’s use of the term “prior sexual assault” is more reasonably read to mean that Corral had previously committed that sexual assault, not that he had already been convicted of it at the time of the current offense.

We therefore read the circuit court’s sentencing comments as accurately stating Corral’s history of offenses as follows: (1) Corral committed a sexual assault in August 2019; (2) Corral was ultimately convicted of the August 2019 offense; and (3) Corral began committing the sexual assaults in this case, which were alleged to have occurred between January and April 2020, within months of committing the August 2019 offense. We therefore conclude that Corral has not established that it is “highly probable or reasonably certain” that the court believed, at the time of sentencing, that Corral had a prior sexual assault conviction at the time he committed the sexual assault in this case in January 2020. *See Harris*, 326 Wis. 2d 685, ¶35. Because Corral has not met his burden to establish that the information before the court was inaccurate, the court properly denied Corral’s motion for resentencing.

Therefore,

IT IS ORDERED that the judgment and order are 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