



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

May 11, 2023

To:

Hon. Josann M. Reynolds
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Anton L. Jackson 504904
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2022AP9

State of Wisconsin v. Anton L. Jackson (L.C. # 2014CF1723)

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

Anton Jackson, pro se, appeals a circuit court order denying his postconviction motion. He argues that the court sentenced him based on inaccurate information by relying on the length of a separate revocation sentence already imposed on him that had been miscalculated. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We affirm.

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

Jackson was convicted of one count of armed robbery and one count of felon in possession of a firearm, both as a repeater. The circuit court sentenced him in 2015, then later issued an order correcting his sentence. As discussed further below, Jackson's arguments are based on both a statement the court made at the sentencing hearing and an additional statement that the court made in its order correcting his sentence. Both statements refer to Jackson's separate revocation sentence.

At the sentencing hearing, it was undisputed that Jackson had recently begun serving the revocation sentence and Jackson's counsel said (without contradiction by anyone) that the revocation sentence included eight years of confinement time. The State recommended that the circuit court impose a total of ten years of confinement and ten years of extended supervision, consecutive to the revocation sentence.² Jackson recommended a total of ten years of confinement and eight years of extended supervision, concurrent with the revocation sentence.

In explaining the basis for Jackson's sentence, the court discussed the gravity and nature of his offenses, his failure to take responsibility, his lack of prior success on probation and extended supervision, and several other factors. The court's comments included the following: "[I]t's time for a big time out. And I don't like to do that but as a deterrence to others and to not unduly depreciate the seriousness of these charges, it's time for a significant prison term." The court also said, "I am struggling with the amount to add on to the 8 years. I wasn't clear on how long the revocation had resulted in the term of confinement."

² To be precise, the State recommended that Jackson's sentence here be consecutive to any previous sentence, not just to Jackson's revocation sentence. However, the parties do not suggest that Jackson was or is serving any other previous sentence that is relevant to our analysis.

Ultimately, the court imposed twelve years of confinement and ten years of extended supervision on the armed robbery count and five years of confinement and five years of extended supervision on the felon in possession of a firearm count. The court stated that these sentences would be concurrent with one another but that the armed robbery sentence would be consecutive to Jackson's revocation sentence. The court summarized by stating that Jackson was receiving significantly less time than the State recommended and slightly more time than Jackson recommended.

When the court later issued its order correcting Jackson's sentence, the court explained that it had made a significant error by stating that the armed robbery sentence was to be consecutive to his revocation sentence. The court stated that the sentencing record showed that it had intended to impose the armed robbery sentence *concurrent* with his revocation sentence. The court reasoned, in part, that its intentions were reflected by its statement at sentencing that it was imposing significantly less time than the State recommended and slightly more time than the defense recommended; in contrast, a consecutive sentence would have resulted in significantly more time than the State had recommended. The court also stated that "[t]he practical effect of the 12 years initial confinement being concurrent instead of consecutive to his current eight (8) year [revocation] sentence was to add an additional four (4) years of confinement."

Jackson filed the postconviction motion at issue here. He argued that the court sentenced him based on inaccurate information because the confinement portion of his revocation sentence had been miscalculated (that it was five years, not eight years) and because the court had relied on the length of the (inaccurately calculated) revocation sentence. 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. “Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews de novo.” *Id.*

“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. If the defendant makes both of these showings, then “the burden shifts to the State to show that the error was harmless.” *Id.*

Jackson argues that there was inaccurate information before the sentencing court because his revocation sentence was miscalculated to include eight years of confinement instead of five years of confinement. He further argues that the court’s two statements referencing the number of years that his new sentence would add to the eight years of confinement in his revocation sentence demonstrate that the court relied on inaccurate information. The State contends, among other arguments, that Jackson has not shown by clear and convincing evidence that there was inaccurate information or that the court relied on that information.

We will assume, without deciding, that the confinement portion of Jackson’s revocation sentence was in fact five years and there was therefore inaccurate information before the sentencing court. Even so, we agree with the State that Jackson has not established by clear and convincing evidence that the court actually relied on this information.

Jackson focuses on the court’s two statements that referenced his revocation sentence being eight years. First, at sentencing: “I am struggling with the amount to add on to the 8 years. I wasn’t clear on how long the revocation had resulted in the term of confinement.”

And then, in correcting his sentence: “The practical effect of the 12 years initial confinement being concurrent instead of consecutive to his current eight (8) year [revocation] sentence was to add an additional four (4) years of confinement.”

According to Jackson, these statements show that the court determined the length of his sentence here based on the confinement time in his revocation sentence and that the court used his revocation sentence to “rationalize” his new sentence. Stated another way, Jackson argues that the court’s statements referencing his revocation sentence show that the court’s intention was to determine his sentence here by adding years to his revocation sentence. The implication of his argument is that the court would have imposed three fewer years (nine instead of twelve) if it had understood that his revocation sentence was three fewer years. We are not persuaded.

The court’s statement at sentencing, that it was “struggling with the amount to add on to the 8 years,” might support Jackson’s argument when viewed in isolation. However, when read with the court’s other remarks, both at sentencing and when correcting Jackson’s sentence, this statement is not clear and convincing evidence that the court determined Jackson’s new sentence based on the court’s understanding of the length of his revocation sentence. Instead, as the court expressly stated, its intention was to impose a substantial sentence that was significantly less than the State had recommended and slightly more than Jackson had recommended.

Jackson also reads too much into the court’s statement that “[t]he practical effect” of his sentence was to “add an additional four (4) years of confinement.” This statement is not evidence that the court was sentencing Jackson by adding four years to his revocation sentence. As the State argues, the court’s “[a]cknowledgement of this practical effect does not mean that it

was the *intended* effect.” The court’s statement was a factual description of Jackson’s sentence, not an explanation of why the court imposed the sentence.

The court explained that it was imposing Jackson’s sentence based on the gravity and nature of Jackson’s offenses, his failure to take responsibility, his lack of prior success on probation and extended supervision, and other relevant factors. Jackson’s focus on the court’s statements referencing his revocation sentence ignores this broader context.

Jackson accurately quotes the observation of our supreme court that whether ““other [accurate] information *might* have justified [a] sentence, independent of the inaccurate information, is irrelevant when the court has relied on inaccurate information as *part* of the basis of the sentence.”” See *State v. Travis*, 2013 WI 38, ¶47, 347 Wis. 2d 142, 832 N.W.2d 491 (emphasis in original) (quoted source omitted). However, the sentencing court here *did* rely on accurate information independent of the length of Jackson’s revocation sentence, and Jackson does not persuade us by clear and convincing evidence that the court relied on its understanding of the length of his revocation sentence in determining his new sentence.

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals