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 II

March 13, 2024

To:

Hon. Mark T. Slate
Circuit Court Judge
Electronic Notice

Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
Electronic Notice

Daniel J. O'Brien
Electronic Notice

James A. Rebholz
Electronic Notice

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

2022AP1365-CR State of Wisconsin v. Tyrone L. Emig, Jr. (L.C. #2020CF117)

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).

Tyrone L. Emig, Jr. appeals a judgment of conviction entered upon his no-contest plea to armed robbery with threat of force as a repeater. He also appeals the denial of his postconviction motion. 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 affirm.

Emig raises two issues on appeal relating to his sentencing. His first argument is framed as a due process challenge based upon trial counsel's "failure … to fully disclose inaccurate

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

reporting in the pre-sentence investigation (PSI)" to him prior to sentencing. Like the circuit court, we regard this as an ineffective assistance of counsel claim, requiring a showing of both deficient performance and prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).[2]

It is undisputed that Emig did not raise his concerns with the PSI to his trial counsel or to the circuit court. Instead, he argues he was unaware of the contents of the PSI because his attorney failed to adequately review the document with him. Emig's ineffective assistance claim boils down to a challenge to a particular factual finding by the circuit court: that Emig's trial counsel testified credibly that he reviewed the PSI "verbatim" with Emig during a phone call on the day prior to sentencing. This cannot be so, Emig argues, because trial counsel could not recall whether corrections staff had cut off their phone conference and because "it is objectively clear counsel could not have carefully read to his client even most of the 35-page PSI in this aborted call."

We reject Emig's challenge to the circuit court's factual finding and conclude the finding was not clearly erroneous. Not only was the finding supported by trial counsel's testimony, but Emig's own testimony and other evidence provided circumstantial support for counsel's recollection of a near-verbatim recitation of the PSI consents. Specifically, the court noted Emig's uncertain memory about the length of the call, his testimony that they discussed a large number of things during the call, and his recollection that he was focused on his criminal history

[2] As part of his ineffective-assistance-of-counsel analysis, Emig makes cursory arguments relating to new factors warranting sentence modification, *see* ***State v. Harbor***, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828, and resentencing based on inaccurate information, *see* ***State v. Tiepelman***, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1. Nowhere does Emig make an apparent effort to articulate or apply the standards relating to legal claims for relief. Accordingly, we deem those arguments undeveloped and do not address them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

because it "really made [him] look bad." The court also noted that Emig specifically recalled discussing the PSI's author's sentencing recommendation; the fact that the recommendation appeared at the end of the PSI lent additional credence to trial counsel's testimony that he had reviewed the entire document with Emig.

Because we uphold the circuit court's factual finding regarding trial counsel's conduct, we conclude Emig has failed to demonstrate that his attorney performed deficiently. Emig has not established that counsel's representation fell below an objective standard of reasonableness. *See* ***Strickland***, 466 U.S. at 688.

Emig's second sentencing challenge is his assertion that the circuit court erroneously exercised its discretion by imposing a twenty-year sentence, bifurcated as fifteen years' initial confinement and five years' extended supervision. Referring to Emig's age (62) at the time of sentencing, he argues it was "necessary for the court to consider and explain as fully as possible why a *de facto* 'death sentence' was required for this defendant."[3] In general, Emig highlights some mitigating circumstances, such as that he cooperated with police and resolved his case by plea.

The circuit court considered the appropriate factors, including Emig's character, the seriousness of the offense, and the need to protect the public. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It noted Emig's lifetime history of criminality, its skepticism at Emig's rehabilitative potential, the trauma endured by the victim, and the

[3] Emig was also subject to a lengthy revocation sentence. This sentence was ordered to be served consecutive to any other sentence.

premeditated nature of the crime. The court explicitly acknowledged the effect of a lengthy sentence, remarking that Emig "deserve[d] to spend the rest of [his] life in prison." Though the court's remarks were not extensive, they were sufficient to satisfy its obligation to explain the reasons for its sentence.

Based on the foregoing,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals