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**DISTRICT IV**

January 22, 2013

To:

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

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2011AP2122-CR	State of Wisconsin v. Gregory A. Ledbetter (L.C. # 2005CF2383)
2011AP2123-CR	State of Wisconsin v. Gregory A. Ledbetter (L.C. # 2005CF2498)
2011AP2124-CR	State of Wisconsin v. Gregory A. Ledbetter (L.C. # 2005CF2499)
2011AP2125-CR	State of Wisconsin v. Gregory A. Ledbetter (L.C. # 2006CF401)

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

Gregory Ledbetter, pro se, appeals an order denying his postconviction motion for resentencing. Ledbetter argues that he was sentenced on inaccurate information and his trial counsel was ineffective at sentencing. 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 (2009-10).<sup>1</sup> We summarily affirm.

Ledbetter was convicted of multiple criminal counts based on sexual activity between Ledbetter and multiple children and one mentally disabled adult. Ledbetter was sentenced to a total of 185 years of imprisonment. Ledbetter moved for resentencing. Following an evidentiary hearing, the circuit court denied the motion.

Ledbetter contends that he was sentenced based on inaccurate information.<sup>2</sup> *See State v. Anderson*, 222 Wis. 2d 403, 408, 588 N.W.2d 75 (“A defendant has a due process right to be sentenced on the basis of true and correct information.”). Ledbetter asserts that additional information should have been provided to the court, including the following: (1) that several of the victims are willing to provide information favorable to Ledbetter; (2) that, while the prosecution relied on evidence that Ledbetter had allowed the victims to hold Ledbetter’s gun, Ledbetter was a hunter with no negative gun incidents and disposed of his gun when one of the victims moved in with Ledbetter; and (3) that Ledbetter’s family is supportive of him and willing to help him should he be released from confinement.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> Part of Ledbetter’s argument is that he pled guilty to one crime that he did not commit, and that the court erred by relying on that conviction in imposing sentence. However, as the State points out, that argument is properly raised as a motion for plea withdrawal, not in a motion for resentencing. Ledbetter acknowledges as much in his reply brief, indicating his intent to raise that argument in a motion for plea withdrawal.

“A defendant who requests resentencing must show that specific information ... was inaccurate and that the court actually relied upon the inaccurate information in sentencing.” *Id.* Here, to the extent that Ledbetter has identified facts that the court actually relied upon in imposing sentence, Ledbetter has failed to establish the inaccuracy of any of that information. As the circuit court noted at the motion hearing, Ledbetter did not present any evidence to support his claims. For example, Ledbetter did not provide any evidence to establish that any of the victims are willing to provide statements favorable to Ledbetter or that any information as to Ledbetter’s gun ownership or family support provided at sentencing was inaccurate. Because Ledbetter has provided only assertions, with no supporting proof, Ledbetter has not met his burden to establish that he was sentenced on inaccurate information. *See State v. Harris*, 2010 WI 79, ¶34, 326 Wis. 2d 685, 786 N.W.2d 409 (holding that a defendant seeking resentencing based on being sentenced on inaccurate information must establish by clear and convincing evidence that the circuit court actually relied on inaccurate information at sentencing).

Ledbetter also argues that his trial counsel was ineffective at sentencing. *See State v. Love*, 2005 WI 116, ¶30, 284 Wis. 2d 111, 700 N.W.2d 62 (counsel was ineffective if counsel’s performance was deficient and the deficiency prejudiced the defendant). Ledbetter contends that his trial counsel was ineffective at sentencing by failing to act on Ledbetter’s behalf, including failing to: (1) obtain an independent presentence investigation report; (2) contact the victims who would have provided favorable information; and (3) provide the court with mitigating factors such as the victims’ ages. Again, to the extent that Ledbetter has identified any omissions by counsel that may arguably constitute ineffective assistance of counsel, Ledbetter presents only allegations without supporting evidence. For example, Ledbetter provides no evidence to show

that an independent presentence investigation report would have provided different information or that the victims would have provided supporting statements for him, nor does Ledbetter indicate what additional information counsel should have provided with respect to the victims' ages that was not already available to the court. Accordingly, Ledbetter has not met his burden of proof to establish a claim of ineffective assistance of counsel. *See State v. Pitsch*, 124 Wis. 2d 628, 633, 369 N.W.2d 711 (1985) (explaining that the defendant bears the burden of proving ineffective assistance of counsel); *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979) (explaining that a defendant must present the testimony of trial counsel at the postconviction motion hearing to meet his burden of showing ineffective assistance of counsel).

In sum, we conclude that the circuit court properly denied Ledbetter's motion for resentencing. We affirm.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*