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DISTRICT IV

March 11, 2013

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

2012AP203-CR

State of Wisconsin v. Jose J. Blecha (L.C. # 2000CF536)

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

Jose Blecha appeals, pro se, an order denying his motion for sentence modification. He argues that the inaccurate information about a read-in offense and an excessive term of extended supervision are new factors requiring sentence modification. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition.¹ *See* WIS. STAT. RULE 809.21 (2011-12).² We affirm the order of the circuit court.

¹ We grant Blecha's motion for an extension of time to file his reply brief, and accept the reply brief he filed nearly three months late.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Blecha entered a guilty plea to repeated sexual assault of the same child under a plea agreement that included dismissing and reading in a charge of interference with the custody of a child. On July 26, 2001, Blecha was sentenced to 18 years of initial confinement and 22 years of extended supervision.³ In December 2011, Blecha filed his motion for sentence modification, claiming as a new factor that the interference with the custody of a child charge had not been filed and, therefore, he was sentenced on the basis of inaccurate information about the read-in offense. He also claimed that his extended supervision term exceeds the maximum allowable by law. His motion was denied and Blecha appeals.

Blecha argues that he was sentenced based on the inaccurate premise that there was a read-in offense, which was not the case because the interference with custody charge was never filed. This is incorrect. Although the criminal complaint did not charge the interference with custody offense, the information filed September 19, 2000, did. Blecha correctly points out that the amended information presented to the circuit court when Blecha entered his guilty plea did not list the interference with custody offense. However, that does not mean the offense was not charged. The omission of the offense from the amended information was consistent with the prosecution's agreement to dismiss the interference with custody offense. There was no inaccurate information; the interference with custody offense was a read-in offense.⁴

³ Blecha's conviction was affirmed in a no-merit appeal. *State v. Blecha*, No. 2002AP2245-CRNM, unpublished op. and order (WI App Nov. 14, 2002).

⁴ Blecha's claims that he was sentenced based on inaccurate information fails for an additional reason. A defendant who makes such a claim must show both that the information was inaccurate and that the sentencing court actually relied on it. *State v. Tjepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. At the sentencing held months after the taking of Blecha's plea, neither the prosecutor nor the sentencing court made reference to the read-in offense. Blecha has not established that the read-in offense was actually relied on.

(continued)

With respect to his claim that his term of extended supervision exceeds the allowable maximum, Blecha states that the first enactment of truth-in-sentencing, TIS-I, does not apply to his case and that the law had changed by the time he was sentenced so that TIS-II capped the maximum term of extended supervision at twenty years for his conviction. He is wrong. TIS-II did not take effect until February 1, 2003. See *State v. Cole*, 2003 WI 59, ¶4, 262 Wis. 2d 167, 663 N.W.2d 700. Blecha was sentenced July 26, 2001, when TIS-I imposed no cap on the amount of extended supervision, that is, no cap except the limitation that the total bifurcated sentence could not exceed the maximum term for the crime. Cf. WIS. STAT. § 973.01(2) (1999-2000); WIS. STAT. § 973.01(2)(d) (2001-02). *State v. Trujillo*, 2005 WI 45, 279 Wis. 2d 712, 694 N.W.2d 933, *abrogated on other grounds by State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828, holds that the reduced maximum confinement time under TIS-II for the same TIS-I felony is not a new factor when a defendant moves for sentence modification of a TIS-I sentence. *Trujillo*, 279 Wis. 2d 712, ¶30. That TIS-II capped the term of extended supervision is not a new factor entitling Blecha to sentence modification.

Upon the foregoing reasons,

For the first time in his reply brief, Blecha argues that the circuit court's failure during the plea colloquy to advise him as to the legal effect of the read-in offense is valid grounds for resentencing. We need not address an issue raised for the first time on appeal and the first time in the reply brief. *State v. Chu*, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 643 N.W.2d 878; *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997).

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

Diane M. Fremgen
Clerk of Court of Appeals