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DISTRICT II/IV

July 15, 2013

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

2012AP1918-CR

State of Wisconsin v. Christopher M. Ritchie (L.C. # 2011CF633)

Before Sherman, Blanchard and Kloppenburg, JJ.

Christopher Ritchie appeals a felony judgment of conviction and an order denying his postconviction motion for resentencing. He claims that the prosecutor breached the plea agreement when making the State's sentence recommendation and that counsel provided ineffective assistance for failing to object. After reviewing the briefs and record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm for the reasons discussed below.

The relevant facts are undisputed. The plea agreement required the State to recommend a sentence of one year of initial incarceration and one year of extended supervision. At the sentencing hearing, the prosecutor stated its recommendation as follows:

... Your Honor, the State's recommendation is for 12 months of initial confinement, 12 months of extended supervision. I have had the opportunity to review both the criminal complaint as well as the presentence investigative report and the victim impact statement. I believe the Court has all of the information that I can provide in that regard.

The PSI recommended a sentence of three years of initial incarceration and four years of extended supervision, and the victim wrote in her impact statement that "if he could be put away for life, I still wouldn't be happy." The circuit court sentenced Ritchie to two and one-half years' incarceration and three and one-half years' extended supervision.

There is also no disagreement between the parties as to the relevant test for determining whether a sentence recommendation violated a plea agreement. A prosecutor "may not render less than a neutral recitation of the terms of the plea agreement." *State v. Poole*, 131 Wis. 2d 359, 364, 394 N.W.2d 909 (Ct. App. 1986).

Ritchie argues that the prosecutor here rendered a less than neutral recitation of the agreed-upon sentence recommendation, and thereby violated the plea agreement, by "referencing documents juxtaposed to [the State's] recommendation" that contained significantly higher

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

sentence recommendations and by “failing to provide any reasoning to support [the State’s] recommendation.” We disagree with Ritchie’s characterization of the prosecutor’s comments.

The prosecutor did not use any words such as “however” or “but” that would signal the State had reservations about its recommendation. Merely informing the court that the State was aware of the information contained in the PSI and victim impact statement and had nothing else to add does not constitute a suggestion from the State that the court disregard the State’s recommendation and instead follow one of the other recommendations. To the contrary, the more reasonable inference is that the prosecutor is satisfied that the referenced information also supports the State’s recommendation. There is no requirement that the prosecutor express any particular degree of enthusiasm in making the State’s recommendation or expressly disavow or criticize any other recommendations.

In sum, we do not view the prosecutor’s statement here as anything other than neutral. Because we reject the defendant’s premise that the statement was not neutral, we conclude there was no breach of the plea agreement or ineffective assistance of counsel.

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals