

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 19, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2524-CR

Cir. Ct. No. 2012CF335

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADAM J. GOAD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: MARY KAY WAGNER, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. Adam Goad appeals from a judgment convicting him, on his guilty plea, of repeated sexual assault of the same child. Goad also appeals from an order denying his postconviction motion seeking resentencing because the circuit court allegedly relied upon inaccurate information about the

time period during which the crime was committed. We agree with the circuit court that Goad did not establish that the circuit court relied upon inaccurate information when it imposed a sixteen-year sentence. Therefore, we affirm.

¶2 The criminal complaint and the information alleged that the repeated sexual assault occurred during a roughly three-month period when the victim was thirteen years old. At the plea hearing, the court twice noted that the crime occurred over a three-month period. Goad indicated that he understood the charge, and the defense stipulated to the factual basis set out in the complaint. The presentence investigation report noted the same three-month period. However, the psychosexual risk evaluation (PSR) commissioned by Goad and provided to the court erroneously stated that the crime occurred over a fourteen-month period (despite an earlier reference in the PSR to the three-month period). There is no dispute that the PSR erroneously referred to a fourteen-month period.

¶3 When the circuit court called the case at the sentencing hearing, the court described the matter as a sentencing for one count of repeated sexual assault of a child between December 2010 through February 2011, or a period of approximately three months. The court stated that it had reviewed both the presentence investigation report and the PSR. Goad then offered corrections to the presentence investigation report, but he did not offer any corrections to the PSR. During her sentencing argument, the prosecutor mentioned three times that the crime occurred over a fourteen-month period and referred, at another point in her argument, to the crime having occurred over a “good portion of the year.” At no time did Goad object or correct the prosecutor.

¶4 In its sentencing remarks, the circuit court focused on the gravity of the offense, the need to rehabilitate Goad, and the need to protect others from

Goad's sexual interest in children. The court considered Goad's character and the effect of the crime upon the victim and her family. The circuit court did not refer to the fourteen-month time period mentioned in the PSR.

¶5 Postconviction, Goad sought resentencing because the circuit court relied upon inaccurate information regarding the duration of the offense and misunderstood the PSR's discussion of his recidivism risk. The circuit court acknowledged that while it considered the PSR at sentencing, it did not consider the PSR's erroneous statement about the duration of the crime. The court's sentencing rationale was based upon the risk to other children and the community and the need to punish Goad for his conduct. The court denied Goad's motion, and he appeals.

¶6 A defendant has a due process right to be sentenced based upon accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. To obtain resentencing, a defendant must establish by clear and convincing evidence that the information was inaccurate and the court actually relied upon it. *Id.*, ¶¶25-26. Whether the circuit court relied upon inaccurate information at sentencing presents a question of law we decide independently of the circuit court. *Id.*, ¶9. We may independently review the record to determine whether the court relied on the challenged information. *State v. Groth*, 2002 WI App 299, ¶28, 258 Wis. 2d 889, 655 N.W.2d 163.

¶7 On appeal, Goad argues that he was sentenced based on inaccurate information. In support, Goad cites the prosecutor's four references to fourteen months or a "good portion of a year" when describing the duration of the crime. The circuit court did not refer to the fourteen-month period at any point during the sentencing hearing. Notably, at the outset of the sentencing hearing the court

noted the three-month period during which the charged crime occurred. Goad cites no authority for the proposition that the only way for the circuit court to demonstrate that it did not rely upon the fourteen-month reference was for it to specifically acknowledge the three-month duration during its sentencing rationale. Goad has not met his burden to show that the court sentenced Goad based on inaccurate information.

¶8 Goad next argues that the circuit court relied upon inaccurate information about his recidivism risk. Specifically, Goad complains that the circuit court found that the PSR concluded that Goad posed a moderate risk to sexually reoffend rather than the low risk the PSR may have actually concluded. Goad argues that this perspective affected the court's assessment of the need to protect the public and impacted the sentence. We are not persuaded.

¶9 Although Goad cites the PSR's discussion of his risk to reoffend, the PSR itself states that "risk" to reoffend "is defined in a very narrow and limited sense." "Risk" in the PSR "does not refer to the seriousness of these offenses, the amount of emotional or physical pain and suffering that may be caused to future victims, or to some measure of the harm that was done in the past to victims, their families, or the community." We note that these are precisely the considerations the circuit court must evaluate at sentencing, and the court in this case did so. The PSR evaluator's views were but one consideration at sentencing, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and the weight of the various sentencing considerations was for the circuit court to determine, *State v. Steele*, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

