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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2020AP742-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LISA RENA LANTZ,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Lisa Rena Lantz seeks review of an unpublished decision of the court of appeals, District III that affirmed her convictions for one count of conspiring to deliver methamphetamine, two counts of soliciting the delivery of methamphetamine, and one count of maintaining a drug trafficking place. *State v. Lantz*, No. 2020AP742-CR, 2021 WL 3160499 (Wis. Ct. App. July 27, 2021) [“Decision”]. The conspiracy took place from September 2015 to March 2016. The solicitation convictions were based on two acts Lantz committed on specific dates during that time.

The court of appeals determined that Lantz’s convictions on the solicitation and the conspiracy offenses were not multiplicitous because they were different in law and fact, and Lantz had not rebutted the presumption that the Legislature intended to allow multiple punishments. And the court of appeals determined that the circuit court did not err at sentencing by failing to consider mitigating information.

Neither aspect of the court of appeals’ unpublished decision warrants review. The court of appeals applied well-established law to the facts of this case. Lantz simply disagrees with how it did so and seeks error correction.

ARGUMENT

This court should deny the petition for review because there is no need for law development or clarification. And the issues involved in this case are factual in nature.

I. Lantz’s multiplicity claim does not warrant review.

The court of appeals applied the well-established test for multiplicity claims, as set forth by this Court in *State v. Ziegler*, 2012 WI 73, ¶ 60, 342 Wis. 2d 256, 816 N.W.2d 238. Decision ¶ 9. The court of appeals first applied the “elements-

only” test. Decision ¶ 10. After noting that Lantz “concedes,” that her “solicitation and conspiracy convictions were different in law,” the court of appeals explained how solicitation and conspiracy contain different elements. Decision ¶ 11–12.

The court of appeals next concluded that Lantz’s convictions were different in fact. Decision ¶ 13. It rejected Lantz’ argument that “a conspiracy conviction involving multiple offenses encompasses all acts that are the same in time and in nature.” Decision ¶ 14. The court of appeals explained that the specific acts underlying the convictions in Lantz’s case were different—detailing how Lantz purchased methamphetamine for her own use but also to sell to others: “It is undisputed that Yang delivered over 115 grams of methamphetamine to Lantz during an eleven-week period. Lantz also admitted to law enforcement that she purchased about half of the methamphetamine to sell to other people.” Decision ¶ 20 & n.4. The court explained that it was reasonable to view the conspiracy charge as relating to the delivery offenses, as distinct from the solicitation charges that could relate to her personal use. Decision ¶ 20 & n.4. Additionally, even assuming that the conspiracy conviction was based on the delivery of the drugs *to* Lantz, the facts showed that Lantz purchased 115 grams of methamphetamine during the eleven-week period and that the amount included in the solicitation charges was only 20 grams, such that her non-solicitation conduct took her well-over the 50 gram threshold for the conspiracy. Decision ¶ 19. Accordingly, the court of appeals concluded that “[t]he specific acts underlying Lantz’s solicitation conviction differ in time from the acts underlying her conspiracy conviction. Decision ¶ 15.

Because the conspiracy and solicitation offenses were neither identical in law nor fact, the court followed the presumption that the Legislature intended to permit multiple

punishments. Decision ¶ 16 (citing *Ziegler*, 342 Wis. 2d 256, ¶ 62). And the court of appeals then concluded that Lantz failed to rebut this presumption under these facts. Decision ¶¶ 29–35.

In short, the court of appeals applied the appropriate legal standard for analyzing multiplicity claims to the unique facts of the particular drug solicitation and conspiracy charges Lantz faced. Lantz simply disagrees with how the court of appeals did so, and, as such, at most seeks only error correction.

And even if this Court were to agree with Lantz that the court of appeals mis-applied *Ziegler*, Lantz cannot show that her case involves overriding issues of statewide importance that are legal in nature; instead, the well-reasoned court of appeals decision demonstrates how fact-dependent the *Ziegler* analysis is in this case.

Accordingly, Lantz’s multiplicity claim does not meet the standards for review under Wis. Stat. § (Rule) 809.62(1r).

II. Lantz’s run-of-the-mill sentencing challenge does not warrant review.

An appellate court reviews a criminal sentence for an erroneous exercise of discretion. *State v. Frey*, 2012 WI 99, ¶ 37, 343 Wis. 2d 358, 817 N.W.2d 436. An erroneous exercise of discretion occurs when a circuit court imposes a sentence “without the underpinnings of an explained judicial reasoning process.” *McCleary v. State*, 49 Wis. 2d 263, 278, 182 N.W.2d 512 (1971); *see also State v. Gallion*, 2004 WI 42, ¶ 3, 270 Wis. 2d 535, 678 N.W.2d 197. As part of an otherwise proper exercise of sentencing discretion, the sentencing court need not explain its deviation from the presentence investigation report’s recommendation. *State v. Johnson*, 158 Wis. 2d 458, 469, 463 N.W.2d 352 (Ct. App. 1990).

The court of appeals rejected Lantz's claim that the sentencing court erred by exceeding the recommendation of the State and PSI recommendation and by not giving enough weight to mitigating circumstances, including Lantz's drug habit and history of physical and sexual abuse. Decision ¶¶ 36–43. The court of appeals explained that the circuit court addressed the appropriate sentencing factors, and that it considered the mitigating factors concerning Lantz's history, which "provide[d] an explanation for its decision not to impose a lesser sentence." Decision ¶ 41. While noting that the sentencing court's comments were "blunt" and that another court may have weighed Lantz's personal history differently, the sentencing court "did not err by giving greater weight to the need to protect the public than to Lantz's personal history." Decision ¶ 41. Finally, the sentencing court did not err by questioning Lantz's ability to remain drug-free given her history. Decision ¶ 43.

In short, the sentencing decision was a quintessential appropriate exercise of sentencing discretion. The circuit court's sentence had "a rational and explainable basis." *Gallion*, 270 Wis. 2d 535 ¶ 76 (citation omitted). There is nothing in the circuit court's sentence that warrants review. Review would amount to mere error correction under an erroneous exercise of discretion standard that is based entirely on the facts specific to Lantz's crime and personal history. Wis. Stat. § (Rule) 809.62(1r). Review is not justified.

CONCLUSION

The court should deny the petition for review.

Dated this 20th day of September 2021.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b) and 809.62(4) (2019–20) for a response produced with a proportional serif font. The length of this response is 1,083 words.

Dated this 20th day of September 2021.

Respectfully submitted,

TIMOTHY M. BARBER
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. §§ (RULE) 809.19(12) and 809.62(4)(b) (2019–20)

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rule) 809.19(12) and 809.62(4)(b) (2019–20).

I further certify that:

This electronic response is identical in content and format to the printed form of the response filed as of this date.

A copy of this certificate has been served with the paper copies of this response filed with the court and served on all opposing parties.

Dated this 20th day of September 2021.

Respectfully submitted,

TIMOTHY M. BARBER
Assistant Attorney General

