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DISTRICT IV

September 18, 2013

To:

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

2013AP141-CR

State of Wisconsin v. Chad A. Stites (L.C. # 2006CF641)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Chad Stites, pro se, argues that the repeater enhancement portion of his sentence is void under WIS. STAT. § 973.13 (2011-12).¹ 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. We summarily affirm.

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

Stites was sentenced in December 2006. On August 28, 2012, Stites moved to vacate the repeater enhancement portion of his sentence. In October 2012, Stites petitioned for sentence adjustment. On December 11, 2012, the court denied Stites' petition for sentence adjustment.

Stites filed the notice of appeal in this case on January 15, 2013. The notice of appeal is timely as to the circuit court's December 11, 2012 order denying sentence adjustment under WIS. STAT. § 973.195. *See* WIS. STAT. § 808.04(1). The order denying sentence adjustment is the only appealable order in the record, and thus our jurisdiction over this appeal is limited to issues raised by appeal of that order. *See* WIS. STAT. §§ 808.03(1) and 808.04(1); WIS. STAT. RULE 809.10(1)(e).

Stites does not argue that the circuit court erred by denying Stites' petition for sentence adjustment. Rather, Stites argues that the court erroneously denied Stites' August 28, 2012 motion to vacate the repeater enhancement portion of his sentence. However, there is no order as to the motion to vacate in the record. The circuit court docket entries indicate Stites filed his motion to vacate the repeater enhancement on August 28, 2012; that Stites sent a letter to the circuit court inquiring into the status of his motion to vacate the repeater enhancement on November 28, 2012; and that Stites moved the court to reconsider his motion to vacate the repeater enhancement on January 18, 2013. However, the docket entries do not reflect any court action on Stites' motion to vacate the repeater enhancement. Because the court has not ruled on

that motion, it is still pending in the circuit court. That issue is not within the scope of our jurisdiction over this appeal.²

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals

² Stites' notice of appeal does not identify what order he is appealing, and states that there was no order entered after more than ninety days. Based on the arguments Stites raises in his briefs, it appears that Stites intended his notice of appeal to bring before this court the issues raised in Stites' August 28, 2012 motion to vacate the repeater enhancement portion of his sentence. It also appears that Stites believed that the motion was automatically denied. Stites was mistaken. Postconviction motions under WIS. STAT. RULE 809.30 are deemed denied if not decided within sixty days. *See* WIS. STAT. RULE 809.30(2)(i). A motion to vacate an excessive sentence, however, is brought under WIS. STAT. § 973.13.