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DISTRICT II

September 25, 2013

To:

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

2013AP26-CR

State of Wisconsin v. Tushar S. Achha (L.C. #2008CF452)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Tushar S. Achha appeals from a circuit court order denying his petition for sentence adjustment. 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 (2011-12).¹ We affirm the order of the circuit court.

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

In December 2008, a jury convicted Achha of one count of using a computer to facilitate a child sex crime, a Class C felony. The circuit court subsequently sentenced him to ten years of imprisonment, with five years of initial confinement and five years of extended supervision.

In November 2012, Achha filed a petition for sentence adjustment under WIS. STAT. § 973.195. In it, he noted that he had served the applicable percentage of his sentence² and that he was subject to deportation from the United States as the result of his crime.

The circuit court denied Achha's petition for sentence adjustment on the ground that it was not in the public interest. This appeal follows.³

On appeal, Achha contends that the circuit court erroneously exercised its discretion in denying his petition for sentence adjustment. He submits that his early release is in the public interest.

The decision to grant or deny a sentence adjustment petition involves the exercise of the circuit court's discretion. *See State v. Stenklyft*, 2005 WI 71, ¶112, 281 Wis.2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring/dissenting). We will not overturn a circuit court's discretionary decision absent an erroneous exercise of discretion and will generally look for reasons to sustain such determinations. *See State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433; *Steinbach v. Gustafson*, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993).

² Under the sentence adjustment statute, Achha could petition for a sentence adjustment after serving 85% of his sentence. *See* WIS. STAT. § 973.195.

³ We assume without deciding that Achha has an appeal of right from the order denying his petition. *See* WIS. STAT. § 808.03(1) (final orders may be appealed as a matter of right).

As outlined in its order, the circuit court considered a number of factors in its decision to deny Achha's petition. They included: (1) the nature of the crime; (2) Achha's character; (3) the protection of the public; (4) the positions of the State and of the victim; (5) Achha's institutional conduct; and (6) Achha's participation and progress in education, treatment, and correctional programs. After considering these factors, the court determined that granting Achha's petition was not in the public interest. This determination was consistent with the wishes of the sentencing court, which wanted Achha to serve the entire term of his initial confinement in order to punish him for his crime, protect public safety, and serve as a deterrent to others.⁴ Accordingly, we are satisfied that the circuit court properly exercised its discretion in denying Achha's petition for sentence adjustment.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

⁴ The sentencing court was aware of Achha's potential deportation for his crime. Recognizing the uncertainty of when and whether that would occur, the court issued what it believed was "an appropriate sentence under these circumstances."