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October 1, 2013

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

2012AP2378-CR

State of Wisconsin v. Reginald A. Wilson (L.C. # 2010CF5470)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Reginald Wilson appeals a judgment convicting him of first-degree reckless injury by use of a dangerous weapon and possession of a firearm by a felon, as well as an order denying his postconviction motion. 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.

The sole issue on appeal is whether Wilson is entitled to be resentenced on the grounds that the circuit court did not allow him to fully exercise his right to allocution. The transcript shows the following exchange at the sentencing hearing:

THE COURT: All right. Mr. Wilson, what do you want to tell me?

THE DEFENDANT: I made a -- accept my punishment today. And by him saying that I, I commit crime every time I am out on the street, and that's not true, you know. I am getting painted in this picture I am a villain or something, you know, bad, super bad person which I'm not. Anybody would tell you so --

THE COURT: All right. Thank you sir.

Wilson alleged in a postconviction motion that the circuit court had “cut him off before he had finished his statement,” and that if he had been allowed to continue he would have told the circuit court about his fragile health, his state of exhaustion, and other circumstances surrounding the incident. The circuit court did not agree that it had cut the defendant off. Rather, the court viewed the dashes after the defendant’s last word in his allocution as a way of showing that there was a pause at that point, which the court could reasonably have taken to mean that the defendant had finished speaking. In any event, the court stated that none of the additional comments Wilson alleged he would have made would have had any effect on the sentence.

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

As the State points out, the circuit court's determination that it did not cut Wilson off is a factual finding subject to the clearly erroneous standard of review. A factual finding is not clearly erroneous unless—after accepting all credibility determinations made and reasonable inferences drawn by the fact finder—the great weight and preponderance of the evidence support a contrary finding. *See Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983).

Wilson asserts that the circuit court's finding that it did not cut him off is “belied by the record,” which we will construe as an argument that the finding is clearly erroneous. However, the sole basis for Wilson's assertion is that the court reporter put two dashes after his last spoken word. The circuit court's inference that the dashes represented a pause indicating that the defendant had finished speaking was reasonable. The only contrary evidence was the competing inference that Wilson would like this court to draw from the same dashes, that the court interrupted or cut off Wilson as he tried to express a new thought. Quite simply, then, this court has no basis to set aside the circuit court's finding that it did not interrupt or cut Wilson off, and therefore no basis to conclude that Wilson's statutory and/or constitutional right to allocution was violated.

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