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DISTRICT II

January 8, 2014

To:

Hon. Richard J. Nuss
Circuit Court Judge
Fond du Lac County Courthouse
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Fond du Lac, WI 54935

Hon. Dale L. English
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2013AP554-CR	State of Wisconsin v. James E. Miller (L.C. # 2001CF453)
2013AP555-CR	State of Wisconsin v. James E. Miller (L.C. # 2006CF234)

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

In these consolidated appeals, James Miller appeals pro se from circuit court orders denying his motions challenging the conditions of extended supervision imposed by the Department of Corrections. 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 circuit court orders because Miller needed to challenge the conditions imposed by the Department of Corrections via a petition for a writ of certiorari in the circuit court after appropriate administrative proceedings.

In appeal No. 2013AP554-CR, Miller was convicted of third-degree sexual assault and second-degree sexual assault of a child. The circuit court withheld sentence and imposed probation, which was later revoked. At sentencing after revocation, the circuit court did not impose conditions of extended supervision. In November 2011, Miller signed his Department of Corrections Rules of Community Supervision along with the Standard Sex Offender Rules. In February 2013, Miller commenced an action in the circuit court to remove the rules (or conditions) imposed by the Department of Corrections. The circuit court, the Honorable Richard Nuss presiding, denied relief because the conditions were not overly broad and had a reasonable relationship to Miller's rehabilitation.

In appeal No. 2013AP555-CR, Miller was convicted of manufacturing/delivering cocaine. The circuit court imposed conditions of extended supervision. In November 2011, Miller signed his Department of Corrections Rules of Community Supervision along with the Standard Sex Offender Rules. In February 2013, Miller commenced an action in the circuit court to remove the rules (or conditions) imposed by the Department of Corrections; he did not challenge the conditions imposed by the circuit court at sentencing. The circuit court, the Honorable Dale English presiding, denied relief because the challenged conditions were imposed by the Department of Corrections, not by the court. Therefore, the court did not have authority to address Miller's claims.

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

We agree with the State that Miller challenged his conditions of extended supervision in the wrong forum.² The challenged conditions were imposed by the Department of Corrections pursuant to WIS. STAT. § 302.113(7). While an offender may petition the circuit court to modify conditions of extended supervision imposed by a court, § 302.113(7m)(a), we find no authority for the proposition that an offender may seek relief in the circuit court in the first instance from conditions imposed by the Department of Corrections. Rather, WIS. ADMIN. CODE § DOC 328.12(1) (Nov. 2013) “provide[s] offenders an opportunity for administrative review of certain decisions by allowing offenders to raise concerns regarding their supervision in an orderly manner.”³ There is no indication that a challenge to Department of Corrections-imposed conditions of extended supervision would not be subject to this provision. *See* WIS. ADMIN. CODE § DOC 328.12(2). After administrative proceedings, a challenge to decisions of the Department of Corrections proceeds via a petition for a writ of certiorari filed in the circuit court. *State ex rel. Macemon v. McReynolds*, 208 Wis. 2d 594, 596 n.1, 561 N.W.2d 779 (Ct. App. 1997).

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

² In appeal No. 2013AP554-CR, we affirm because the circuit court reached the right result for the wrong reason. *State v. King*, 120 Wis. 2d 285, 292, 354 N.W.2d 742 (Ct. App. 1984).

³ The substance of WIS. ADMIN. CODE § DOC 328.12 previously appeared in WIS. ADMIN. CODE § DOC 328.11 (Dec. 2006), which was replaced by WIS. ADMIN. CODE § DOC 328.12 effective on July 1, 2013. 690 Wis. Admin. Reg. 55 (June 30, 2013).