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DISTRICT II

April 30, 2014

To:

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

2013AP1717-CR

State of Wisconsin v. David L. Jones (L.C. # 2012CF746)

Before Brown, C.J., Reilly and Gundrum, JJ.

David L. Jones appeals pro se from a circuit court order denying his motion for sentence modification. Based on 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.

Jones was convicted following a guilty plea of retail theft as a party to a crime. The circuit court withheld sentence and placed Jones on probation for three years with nine months of conditional jail time.

Jones subsequently filed a motion for sentence modification pursuant to WIS. STAT. § 973.19. The circuit court denied the motion, stating that it “made a record indicating all of the reasons that the conditional time was being imposed.” This appeal follows.

On appeal, Jones contends that the circuit court erred in denying his motion for sentence modification. Specifically, he asserts that the circuit court erroneously exercised its discretion at sentencing and relied on inaccurate information when it imposed the nine months of conditional jail time.

There are at least two reasons why Jones cannot prevail in this case. First, because Jones was not sentenced to imprisonment, he had no right to seek relief under WIS. STAT. § 973.19.² Second, Jones’ failure to ensure that the record contains the sentencing transcript precludes this court from addressing his arguments on their merits. *See State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶15 n.4, 258 Wis. 2d 270, 653 N.W.2d 160 (when the record is incomplete, we must assume that the missing material supports the circuit court’s ruling). Accordingly, we cannot say that the circuit court erred in denying Jones’ motion for sentence modification.

Upon the foregoing reasons,

² WISCONSIN STAT. § 973.19(1)(a) provides that a “person sentenced to imprisonment or the intensive sanctions program ... may, within 90 days after the sentence or order is entered, move the court to modify the sentence....”

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