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DISTRICT IV

November 21, 2014

To:

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

2013AP1562-CR State of Wisconsin v. Todd K. Weyher (L.C. # 2003CF111)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Todd Weyher appeals an order denying his motion for sentence modification. 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.

Weyher first argues that the court erred by concluding that his success in mental health treatment while serving his sentence in Michigan was not a new factor. The State correctly notes that progress, rehabilitation, and response to treatment have not historically been considered new

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

factors. See *State v. Crochiere*, 2004 WI 78, ¶15, 273 Wis. 2d 57, 681 N.W.2d 524, *abrogated on other grounds by State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. Weyher does not persuade us that his case is sufficiently different to deviate from this rule.

Weyher next argues that the court should have given him “credit” for the time he spent in treatment in Michigan, because the Wisconsin corrections system is apparently considering that treatment in some manner. If Weyher is making that argument based on a statute, such as WIS. STAT. § 973.155, he does not explain how time in treatment qualifies for credit, and we do not see how it would. Weyher asserts that fundamental fairness should lead to that credit. However, if based only on the concept of fairness, this argument appears to be similar to the new factor argument, and must be rejected for the same reason.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals