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DISTRICT II

March 11, 2015

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

2014AP1154

Juan Milanes v. Program Review Committee (L.C. #2013CV912)

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

Juan Milanes appeals *pro se* from a circuit court order affirming on certiorari review a decision of the Program Review Committee (PRC) to deny his petition to modify his sentence due to an extraordinary health condition. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Milanes is serving a forty-five year term for two counts of discharging a firearm toward a building or vehicle, one count of criminal damage to property, and one count of arson. The crimes arose out of Milanes's anger toward a family member. Over a two-week period in March 2000, Milanes fired a weapon into his own home, slashed the tires of three automobiles, obstructed an officer, attempted to firebomb another home, and fired a weapon through the window of a Radio Shack store. *State v. Milanes*, 2006 WI App 259, ¶2, 297 Wis. 2d 684, 727 N.W.2d 94. Milanes pled no contest to four of these offenses. We affirmed the circuit court's denial of his WIS. STAT. § 974.06 (2003-04) motion. *Milanes*, 297 Wis. 2d 684, ¶1.

Pursuant to WIS. STAT. § 302.113(9g), Milanes petitioned to modify his sentence due to an extraordinary health condition.² The PRC denied the petition, and the circuit court affirmed on certiorari review. The circuit court³ noted that the PRC did not find that modifying Milanes's bifurcated sentence would serve the public interest. The court characterized the PRC's review of Milanes's petition as "well-documented" and "reasoned."

We review the PRC's decision, not that of the circuit court. See *State ex rel. Ortega v. McCaughtry*, 221 Wis. 2d 376, 385, 585 N.W.2d 640 (Ct. App. 1998). Our review is limited to the record created before the PRC. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). We consider whether: (1) the PRC stayed within its jurisdiction; (2) whether the PRC acted according to law; (3) whether the PRC's action was arbitrary,

² Milanes retained counsel for the PRC petition proceeding. He proceeds *pro se* on appeal.

³ We take the circuit court's reasoning from its January 16, 2014 decision. The circuit court later granted reconsideration but reaffirmed its decision in the May 8, 2014 order from which this appeal is taken.

oppressive or unreasonable and represented its will rather than its judgment; and (4) whether the evidence was such that the PRC might reasonably make the order or determination in question.

Id. We do not substitute our own view of the evidence; rather, we determine whether the PRC's decision was supported by substantial evidence. *Von Arx v. Schwarz*, 185 Wis. 2d 645, 656, 517 N.W.2d 540 (Ct. App. 1994).

WISCONSIN STAT. § 302.113(9g)(b)3. states that an inmate serving a bifurcated sentence “may seek modification of the bifurcated sentence ... if ... [t]he inmate has an extraordinary health condition.” If, after reviewing the inmate's petition, the PRC “determines that the public interest would not be served by” modifying the inmate's bifurcated sentence, the PRC “shall deny the inmate's petition.” Section 302.113(9g)(cm).

We conclude that in denying Milanés's petition, the PRC applied the proper legal standard, its decision was not arbitrary, and its decision was supported by substantial evidence. *State ex rel. Whiting*, 158 Wis. 2d at 233; *Von Arx*, 185 Wis. 2d at 656.

We agree with the State that the standard to be applied by the PRC is whether a modified sentence would be in the public interest. We do not agree with Milanés that his extraordinary health condition required the PRC to approve his petition for referral to the sentencing court. WIS. STAT. § 302.113(9g)(cm).

The PRC considered Milanés's extraordinary health condition, including the limitations imposed on his mobility. Milanés argued that his physical limitations lower his risk of firing a weapon or making a bomb and releasing him would save tax dollars. The PRC noted that while Milanés's mobility is reduced due to his health condition, affidavits from his treating physicians

state that Milanese will remain able to care for himself for several years in the future. The PRC stated:

It is the committee's opinion that [Milanes] is capable of committing additional offenses if placed in an aggravating situation. The observation of the PRC and Unit staff monitoring him on a daily basis demonstrate that he continues to have the strength and mobility of his extremities to engage in behaviors similar to those that occurred in his current offense, including possessing and firing a gun and creating an explosive device.

The PRC considered the facts surrounding Milanese's crime spree. Milanese told the PRC that he made a stupid mistake in reaction to various family pressures. The PRC noted that even though he completed a Department of Corrections anger management program, Milanese exhibited anger management issues at the PRC hearing. "[T]he committee unanimously agreed that Mr. Milanese does not appear to practice the tools learned through the program. This was clearly evident during the hearing when he became upset with the committee's recommendation not to refer the petition to the court...." The PRC determined that Milanese "continues to present a risk for release to the community," and the committee did not find that the public interest would be served by modifying his sentence.⁴

The PRC further considered that Milanese demonstrated no remorse at sentencing and after twelve years of incarceration, he continued to blame a family member for provoking his criminal conduct. The PRC found that for Milanese, "standing up for the honor, pride and integrity of his family values was more important than the crimes he committed." The PRC

⁴ The record does not contain a transcript of the PRC hearing. These findings are found in the December 2012 document entitled "Program Review Committee Action."

found that “the dynamics of the offense behaviors were premeditated, calculated and lasted over a significant period of time.”

Finally, the PRC considered that Milanese did not offer any specific details of his release plan other than collecting his pension and living with a friend.

On appeal, Milanese argues that the PRC should have granted his WIS. STAT. § 302.113(9g) petition. Milanese argues that the primary public interest is whether releasing the inmate will save money by relieving the prison system of the financial burden of the inmate’s medical care. Milanese cites his good prison record and his multiple, serious medical problems that require expensive treatment. He complains that the PRC did not consider a Sentence Reform Risk Assessment completed in February 2011, one year before Milanese filed his PRC petition. Milanese disagrees with the PRC’s findings that he lacks remorse and has anger management issues.

The PRC’s determination that releasing Milanese was not in the public interest is supported by substantial evidence. The PRC members were able to observe Milanese at the petition hearing and form opinions about his demeanor and the risk he would pose to the public if released under WIS. STAT. § 302.113(9g). The physicians’ affidavits did not substantiate that Milanese would be physically unable to engage in the type of criminal activity for which he is incarcerated.

Milanese argues that the PRC did not consider his February 2011 risk assessment which he contends was prepared in relation to his petition. The risk assessment predates Milanese’s petition by almost a year. Furthermore, the assessment was part of Milanese’s file. This argument does not persuade us.

On appeal and particularly in his reply brief, Milanese offers additional support for his claim that he is no longer a risk to the public. We only consider what was before the PRC, not any argument or fact offered for the first time on appeal.

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