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May 26, 2015

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

2014AP1376-CR State of Wisconsin v. Ray M. Calderon (L.C. # 2013CF27)

Before Lundsten, Sherman and Kloppenburg, JJ.

Ray Calderon appeals a judgment of conviction and an order denying his motion for postconviction relief. 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 (2013-14).¹

We affirm.

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

At sentencing, the circuit court denied Calderon eligibility for the substance abuse program, which it referred to as earned release. Calderon filed a postconviction motion seeking reconsideration of his eligibility for the program. The court denied the motion.²

On appeal, Calderon argues that the court erroneously exercised its discretion at both the original sentencing and in deciding the postconviction motion. He argues that the court failed to sufficiently articulate the objectives of his sentence and to consider his need for rehabilitation.

We agree with the State that the court's discussion was adequate. The parties agree that the court need not make completely separate findings about program eligibility, as long as the overall sentencing rationale justifies the eligibility decision. See *State v. Owens*, 2006 WI App 75, ¶9, 291 Wis. 2d 229, 713 N.W.2d 187. Here, the court's sentencing discussion noted the seriousness of Calderon's controlled substance offenses, the danger to the community, and the need to protect the public. These considerations sufficiently support a decision making Calderon ineligible. In response to the postconviction motion, the court then repeated these points by checking the boxes for seriousness of the crime and need to protect the community.

² For its denial order, the circuit court used a preprinted form order that appears to have been designed for deciding requests for substance abuse program eligibility under WIS. STAT. § 302.05(3)(e) by defendants who were sentenced before July 26, 2003. However, Calderon's motion was a postconviction motion under WIS. STAT. RULE 809.30(2)(h) challenging the circuit court's exercise of sentencing discretion, and thus would not be governed by the requirements of § 302.05(3)(e). Accordingly, many of the findings and decision choices on the preprinted form would not be necessary or applicable here. For example, on the form, the court denied Calderon's motion in part because the Department of Corrections had not approved the filing of the motion, but no such approval is required for a motion under RULE 809.30.

IT IS ORDERED that the judgment and order appealed are summarily affirmed under
WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals