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DISTRICT II

October 14, 2015

To:

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

2014AP2388-CR

State of Wisconsin v. Yia X. Lee (L.C. #2008CF341)

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

Yia X. Lee, pro se, appeals an order denying his motion to modify his sentence to the extent it required him to repay drug “buy money” as a condition of his extended supervision. Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

In 2009, Lee pled guilty to manufacture with intent to deliver ecstasy. He received five years’ probation and an imposed-and-stayed eight-year sentence. As a condition of his

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

probation, he was ordered to repay the Waukesha Police Department \$1200 in drug “buy money.”

In 2012, the Department of Corrections recommended that Lee’s probation be revoked. Lee moved for sentence modification, alleging the “new factor” of his cooperation with law enforcement in another case. The circuit court granted the motion. It resentenced Lee to two years’ initial confinement and three years’ extended supervision. The State asked that “restitution of \$1,200 ... for buy money” be paid to the city of Waukesha as “a condition of [Lee’s] extended supervision” if he had not paid it while on probation. This colloquy followed:

THE COURT: So, Mr. Lee, a couple things. First of all on this \$1,200 buy money. The State’s asking for it to be added as a condition of costs. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you have any objection to that?

THE DEFENDANT: No.

THE COURT: Did you pay that already?

THE DEFENDANT: No.

THE COURT: Okay. So we’ll add that. That will be a condition of extended supervision.

Postconviction, Lee filed four pro se motions seeking sentence modification and one requesting sentence adjustment. None raised the “buy money” issue. All were denied.

Lee’s fifth motion seeking sentence modification underlies this appeal. Citing *State v. Evans*, 181 Wis. 2d 978, 512 N.W.2d 259 (Ct. App. 1994), Lee alleged that the circuit court did not have the authority to order him to repay the “buy money.” *See id.* at 982-84. Asserting that all the parties overlooked *Evans*, Lee contended it presented a “new factor” for purposes of a

sentence modification under *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). The court denied his motion pursuant to WIS. STAT. § 973.06(1)(am).

On appeal Lee contends the circuit court erroneously exercised its discretion when it refused to modify his sentence to eliminate the order that he repay the “buy money.” Lee has forfeited, if not outright waived, the right to raise this issue on appeal. See *State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. He expressly told the court both that he understood that the State asked that a repayment order be added as a condition and that he did not object. The “unequivocal statement of a lack of objection goes well beyond silence, or a failure to object.” *State v. White*, 68 Wis. 2d 628, 638, 229 N.W.2d 676 (1975).

Lee asserts, however, that all parties were unaware that *Evans* disallows the “buy money” repayment order making it a “new factor.” We need not go there. *Evans* was released in 1994. In 1995, the legislature added “buy money” as a chargeable cost under WIS. STAT. § 973.06(1)(am). See 1995 Wis. Act 53, § 1. His motion was properly denied.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals