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DISTRICT III

November 3, 2015

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

2013AP1872-CR State of Wisconsin v. James Wayne White, Jr. (L. C. #2012CM31)

Before Seidl, J.¹

James White, Jr., pro se, appeals an order denying his postconviction motion for sentence modification. Based upon our review of the brief and record, we conclude that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

White was convicted of two misdemeanor counts of disorderly conduct—domestic abuse. Additionally, both convictions included repeater enhancers. *See* WIS. STAT. § 939.62(1)(a). Following revocation of White’s probation, the circuit court sentenced him to eighteen months’ initial confinement and six months’ extended supervision on each count, to be served concurrently.

White filed his principal appellate brief in October 2013, arguing his sentence was impermissible based on published case law involving felony bifurcated sentences and unpublished cases involving enhanced misdemeanor bifurcated sentences, including *State v. Gerondale*, Nos. 2009AP1237-CR, 2009AP1238-CR, unpublished slip op. (WI App Nov. 3, 2009).² The State successfully moved to stay briefing and hold the case in abeyance pending resolution of the appeal in *State v. Lansanske*, No. 2012AP2016-CR, which had been converted to a three-judge panel and involved similar issues, including application of the *Gerondale* case. *Lansanske* was decided in February 2014. *See State v. Lansanske*, 2014 WI App 26, 353 Wis. 2d 280, 844 N.W.2d 417, *review denied*, 2014 WI 122, 855 N.W.2d 694 (Sept. 18, 2014).

Lansanske observed there was a lack of consensus among multiple unpublished decisions regarding computing bifurcated sentences on enhanced misdemeanors, but it ultimately rejected the *Gerondale* approach and held that the procedure for determining felony bifurcated sentences was inapplicable to enhanced misdemeanors. *Id.*, ¶¶1, 9-11. Specifically, *Lansanske* held “WIS. STAT. § 973.01(2)(c)1. is not applicable to misdemeanors.” *Id.*, ¶11.

² *State v. Gerondale*, Nos. 2009AP1237-CR, 2009AP1238-CR, unpublished slip op. (WI App Nov. 3 2009), could be cited only as persuasive authority. *See* WIS. STAT. RULE 809.23(3)(b).

Our order holding the appeal in abeyance had directed that White “shall” inform this court how he wished to proceed within twenty days after remittitur of the *Lansanske* case. White failed to file anything with this court following remittitur in *Lansanske*, and, following our sua sponte extension of his time to do so, we determined he wished to stand on his existing brief. We then granted the State an opportunity to file a respondent’s brief, and the State likewise failed to file anything with this court.

We conclude that further briefing by White was required in light of the *Lansanske* decision, and that his arguments are therefore inadequately developed and his appeal has been abandoned. See *State v. Flynn*, 190 Wis.2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994). Regardless, it appears White’s arguments would fail on the merits, given that his arguments were based on felony-sentence case law, *Gerondale*, and application of WIS. STAT. § 973.01(2)(c), all of which are rendered inapplicable by *Lansanske*.

THEREFORE,

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

Diane M. Fremgen
Clerk of Court of Appeals