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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT I**

March 9, 2016

To:

Hon. Timothy M. Witkowiak  
Circuit Court Judge  
Safety Building Courtroom, #113  
821 W. State Street  
Milwaukee, WI 53233-1427

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State Street  
Milwaukee, WI 53233

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

Daniel J. O'Brien  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Bert William Johnson 55741  
Oakhill Corr. Inst.  
P.O. Box 938  
Oregon, WI 53575-0938

Oakhill Corr. Inst.  
Oakhill Corr. Inst.  
P.O. Box 938  
Oregon, WI 53575-0938

Special Litigation & Appeals Unit  
P.O. Box 7857  
Madison, WI 53707-7857

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

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2015AP1030-CR

State of Wisconsin v. Bert William Johnson (L.C. #2012CF4798)

Before Curley, P.J., Kessler and Brash, JJ.

Bert William Johnson, *pro se*, appeals an order denying his motion for reconsideration. He argues that the circuit court erred in denying his request that he be made eligible for the earned release program. After 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).<sup>1</sup> We affirm.

Johnson was convicted in 2013 of operating while intoxicated, as a sixth offense. The circuit court sentenced him to six years of imprisonment, with three years of initial confinement and three years of extended supervision, but stayed the sentence in favor of three years of probation. On January 29, 2015, Johnson moved the circuit court to modify his sentence to make him eligible for the earned release program, which is now known as the substance abuse program. *See* WIS. STAT. § 302.05. The circuit court denied the motion on February 2, 2015. On April 23, 2015, Johnson moved the circuit court to reconsider. On April 27, 2015, the circuit court denied the motion.<sup>2</sup>

Johnson has failed to comply with the Rules of Appellate Procedure regarding briefing. *See* WIS. STAT. RULE 809.19. Most importantly, he has not cited to portions of the record, especially the sentencing transcript, in support of his argument and has not provided legal authority to support his argument. *See* WIS. STAT. RULE 809.19(1)(e) (the appellant must cite to legal authority and the parts of the record on which he or she relies). We usually will not review issues that are inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

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

<sup>2</sup> By order of July 10, 2015, we ruled that we have jurisdiction to consider only the appeal from the April 27, 2015 order denying reconsideration because Johnson's appeal from the February 2, 2015 order was untimely.

The inadequacies of Johnson’s brief aside, Johnson’s argument fails because he misreads WIS. STAT. §§ 302.05 and 973.01(3g), which establish the substance abuse program and explain the sentencing court’s role in determining eligibility for the program. Johnson’s argument is that the circuit court was *required* by the statutes to find him eligible because he was not convicted of a violent crime and needs treatment. Johnson ignores § 973.01(3g), which provides that the circuit court “shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible to participate” in the program. Here, the circuit court did just that. It made a discretionary decision that Johnson was not eligible when it sentenced him. We reject Johnson’s argument that §§ 302.05 and 973.01(3g) required otherwise.

Upon the foregoing,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*