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DISTRICT II

April 13, 2016

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

2015AP689-CR

State of Wisconsin v. Quincy Hunter (L.C. #2000CF454)

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

Quincy Hunter appeals pro se from orders denying his motion to correct or modify his sentence and motion for reconsideration. Hunter complains that he was denied the opportunity to appeal an earlier order of the circuit court dated December 12, 2014. 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 reverse the orders of the circuit court and require the court to mail a copy of the December 12, 2014 order to Hunter.

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

In 2002, Hunter was convicted of possession of a firearm by a felon as a habitual offender. The circuit court sentenced him to eleven years of initial confinement followed by five years of extended supervision.

Twelve years later, in November 2014, the department of corrections sent a letter to the circuit court requesting clarification of Hunter's sentence. It noted a discrepancy between the complaint and judgment and questioned whether Hunter was convicted of a Class D felony or a Class E felony.² If Hunter was convicted of a Class E felony, then the court's sentence exceeded the maximum allowed by law.

Around the same time, Hunter filed a pro se motion to correct or modify his sentence pursuant to WIS. STAT. § 974.06. In it, he argued that the court's sentence did exceed the maximum allowed by law.

Ultimately, the circuit court issued a corrected judgment of conviction clarifying that Hunter was convicted of a Class D felony. Accordingly, on December 12, 2014, it issued a written order granting Hunter's motion to correct the sentence, but denying his motion to modify it.

In February 2015, Hunter filed another motion to correct or modify his sentence. In the motion's opening paragraph, Hunter indicated that it was intended to replace the previously filed motion "which this court has yet to rule on...." The circuit court denied Hunter's motion, concluding that the December 12, 2014 order already addressed the issue presented.

² The difference in felony classification was dependent upon whether Hunter was previously convicted of possession of a firearm by a felon.

Hunter then filed a motion for reconsideration, alleging that he never received the December 12, 2014 order and had no way to know about it. Again, the circuit court denied Hunter's motion, concluding that it had already addressed the issue presented. This appeal follows.³

On appeal, Hunter complains that he was denied the opportunity to appeal the circuit court's order of December 12, 2014. We agree.

Here, the December 12, 2014 order does not bear a "cc:" to the parties, and there is no other indication that a copy of it was sent to the parties. Moreover, it is undisputed that the order did not appear in the circuit court's electronic docket entries before the time to appeal from it expired. Based upon these facts, the State submits that this court should reinstate the time for Hunter to appeal the December 12, 2014 order.

We conclude that reinstatement is unnecessary, as the time for appealing the December 12, 2014 order has yet to commence. That is because there is no indication that service of the order was completed in this case. *See* WIS. STAT. § 971.04(3) (if the defendant is not present, the time for appeal from any order under WIS. STAT. § 974.06 shall commence after a copy has been served upon the defendant). In order to provide Hunter with an opportunity to

³ Hunter's appeal does not include the December 12, 2014 order. Therefore, we do not address the merits of that order in this opinion. However, Hunter's allegation that he never received that order and had no way to know about it is properly within the scope of this appeal.

appeal the December 12, 2014 order, we reverse⁴ the orders of the circuit court and require the court to mail a copy of the December 12, 2014 order to Hunter at the address reflected on this opinion and order. Service of the order shall be complete upon mailing. *See* § 971.04(3).

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily reversed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the circuit court shall mail a copy of the December 12, 2014 order to Quincy Hunter at the address reflected on this opinion and order within fourteen days of remittitur.

Diane M. Fremgen
Clerk of Court of Appeals

⁴ The State suggests that the circuit court's orders can be affirmed on the ground that Hunter had previously litigated the challenge to his sentence. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). We decline to apply the procedural bar of *Witkowski* to the facts of this case. We conclude that the circuit court committed reversible error when it did not respond to Hunter's allegation that he never received the December 12, 2014 order and had no way to know about it.