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**DISTRICT II**

March 8, 2017

*To:*

Hon. Timothy D. Boyle  
Circuit Court Judge  
730 Wisconsin Ave.  
Racine, WI 53403

Samuel A. Christensen  
Clerk of Circuit Court  
Racine County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP597

State of Wisconsin v. Marisol Garcia (L.C. #2013FA226)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

The State, through the Racine County Child Support Department, brought an action against Claudia Garcia and her sister, Marisol Garcia, to recover unpaid support for Claudia's child. The child resides with Marisol, as Claudia is incarcerated on a drug conviction. Claudia appeals pro se from the order denying her motion to modify child support. The State advised that it no longer is a party to the action. Marisol has not filed a response brief. Based on our

review of Claudia's brief and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21(2015-16).<sup>1</sup> We affirm.

In August 2012, Claudia was charged with possession with intent to distribute more than forty grams of cocaine. In February 2013, the Racine County Child Support Agency filed this action against her; and in April, the court ordered Claudia to pay \$187 a month beginning May 1. In July, Claudia pled guilty to the drug charge and was sentenced to seven years' incarceration and twelve years' extended supervision.

In August 2014, Claudia filed a pro se motion asking that her child support be modified while she is incarcerated; the circuit court summarily denied her motion. She renewed her request in February 2016; the court again summarily denied her pro se motion.

Claudia appeals from the order denying her February 2016 modification motion. She argues that the circuit court overlooked her rights, as she is unable to pay the ordered support while in prison and she thus likely will face reincarceration upon her release for her failure to pay. She also contends that her criminal activity was not undertaken to deliberately reduce her income to avoid paying child support.

"[W]hether a child support judgment should be modified is left to the circuit court's discretion." *Rottscheit v. Dumler*, 2003 WI 62, ¶11, 262 Wis. 2d 292, 664 N.W.2d 525. Except as provided in WIS. STAT. § 767.59(1f)(d), modification of child support may be made only upon a finding of a substantial change in circumstances. *Rottscheit*, 262 Wis. 2d 292, 911. The

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

burden of establishing a substantial change in circumstances is on the party seeking modification. *Id.* We will affirm the circuit court’s exercise of discretion if the court examined the evidence before it, applied the proper legal standards, and reached a reasonable conclusion. *Id.*

“[P]arents have a duty to support their children.” *Id.*, ¶31. Incarceration loomed on Claudia’s horizon when the court set the level of child support. A court may consider incarceration in reviewing a motion for modification, but incarceration alone is not enough for the court to modify a child support order. *Id.*, ¶30. The court ordered support based on what Claudia could be earning were she not incarcerated. When one becomes a parent, he or she takes on a long-term responsibility that remains regardless of later-made choices. *Id.*, ¶32. As the *Rottscheit* court observed:

[T]he only person to benefit if support is suspended would be [the incarcerated parent]. The purpose of the child support system is to protect the child and his [or her] best interest. Depriving a child of financial support solely because his or her parent committed a criminal act does not serve that interest.

*Id.*, ¶35 (citation omitted). Claudia has not shown how the conditions that were anticipated when support was ordered and now are realized amount to a substantial change in circumstances.

Upon the foregoing reasons,

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

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