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DISTRICT II

June 21, 2017

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

2016AP1548

State of Wisconsin v. Julian C. Holt (L.C. #1994CF4)

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

Julian C. Holt committed murder on January 2, 1994, and was sentenced to life in prison with eligibility for parole after forty years. Holt seeks a writ of habeas corpus, arguing that his sentence violates the ex post facto clause as he should be eligible for parole after twenty years. We conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21 (2015-16).¹

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

WISCONSIN STAT. § 973.014(1)(b) allows a court to set a parole eligibility date later than the statutory minimum of twenty years when a defendant is sentenced to life in prison. Holt claims that § 973.014(1)(b) as applied to him violates the ex post facto law. Holt is wrong as § 973.014 became effective July 1, 1988, some five years before Holt committed his murder. *See* 1987 Wis. Act 412, § 5. Holt argues that because WIS. STAT. § 57.06(1)(b) (1989-90)² was not repealed upon creation of § 973.014, the judge who sentenced him could not ignore the § 57.06(1)(b) requirement that an inmate serving a life sentence was eligible for parole after twenty years. Holt's error is that § 57.06(1)(b) was amended at the same time § 973.014 was created to include the following provision: "Except as provided in § 973.014." 1987 Wis. Act 412, § 3.

The combined effect of WIS. STAT. § 304.06(1)(b) (previously WIS. STAT. § 57.06(1)(b)) and WIS. STAT. § 973.014(1) is that when Holt was sentenced to life in prison, the court had the discretion to set a parole eligibility date greater than twenty years. Holt's ancillary argument that the modification to the parole eligibility date denied him equal protection of the law is also without merit as a rational basis exists for treating persons whose conduct preceded a change in the law differently from persons whose conduct followed the change. *See State v. Alger*, 2013 WI App 148, ¶¶26-27, 352 Wis. 2d 145, 841 N.W.2d 329.

To the extent Holt raises questions as to the sentencing court's exercise of discretion in the setting of his parole eligibility date, we note that a petition for writ of habeas corpus is limited to issues of constitutional or jurisdictional defect. *See State ex rel. Zdanczewicz v.*

² Now renumbered as WIS. STAT. § 304.06(1)(b). *See* 1989 Wis. Act 31.

Snyder, 131 Wis. 2d 147, 151, 388 N.W.2d 612 (1986). As Holt's arguments regarding his claims of erroneous exercise of discretion in sentencing raises no constitutional or jurisdictional issue, we decline to address Holt's argument on this issue.

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals