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DISTRICT IV

July 5, 2017

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

2016AP1475-CR State of Wisconsin v. Stephen J. Hynek (L.C. # 1999CF30)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Stephen Hynek appeals an order denying his motion to amend a judgment of conviction. 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(2015-16).¹ We affirm.

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

Hynek moved to amend the judgment from felony theft to misdemeanor theft. In an accompanying affidavit, his attorney averred that Hynek is seeking that relief so as to become eligible to run for elective office. The circuit court concluded that it lacked authority to grant this relief and denied the motion.

On appeal, we understand Hynek's argument to proceed in the following steps: although Article 13, § 3(3) of the Wisconsin Constitution forbids felons from running for elective office, it provides an exception for felons who have been pardoned; the current governor has publicly stated that he will not consider any pardons; because the pardon process is not available, Hynek "is not afforded the due process contemplated in" the constitution's election eligibility provision; and to prevent this violation of Hynek's right to due process, the courts should invoke their equitable and inherent authority to amend the judgment of conviction and render him eligible for elective office.

We begin by addressing Hynek's use of the term "due process." The fact that the constitution's election eligibility provision refers to what might be described as a pardon "process" that allows a convicted felon to recover eligibility for elective office does not, by itself, implicate the traditional constitutional concept of *due* process. The due process concept is based elsewhere, such as in the federal constitution's Fifth Amendment.

Hynek does not develop in this appeal any argument within the context of the traditional due process concept. He does not, for example, develop an argument that he has a liberty or property interest in a pardon, or in being eligible to seek elective office. Without such an argument, Hynek fails to establish any connection between the relief he seeks and the

constitutional concept of due process. Accordingly, the remainder of our analysis in this order does not discuss due process.

Once stripped of the due process label, the constitutional portion of Hynek’s argument has little left to stand on. Although the state constitution grants the governor a pardon power, it does not require the governor to use it. Nor does the state constitution require that any specific process be available for seeking pardons. In short, Hynek cannot show that a governor’s blanket decision to grant no pardons would be a breach of any constitutional duty or requirement.

The remaining portion of Hynek’s argument is that the relief he seeks should be granted instead by a court, using its equitable and inherent authority. Without attempting to discuss the argument in detail here, it is sufficient to say that Hynek has not cited any case law that expressly allows a court to grant the relief Hynek seeks for the reason that he seeks it. Nor has he cited case law that, in our view, comes close to holding that this power exists. Accordingly, we reject Hynek’s argument as unsupported by legal authority. See *Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (“[a]rguments unsupported by legal authority will not be considered”).

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals