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DISTRICT I

July 25, 2017

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

2016AP1419 State v. Gerald A. Campbell
(L.C. #2000CF5815)

Before Kessler, Brash and Dugan, 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).

Gerald A. Campbell, *pro se*, appeals an order of the circuit court denying his petition for redress. Campbell argues that his sentence exceeded the maximum allowed by statute and that he was illegally placed on electronic monitoring "without any court order." 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.

Background

As set forth in our decision resolving Campbell's no-merit appeal:

> [In 2001,] Campbell pled no contest to two counts of third-degree sexual assault. Campbell was charged with having sexual intercourse with two girls under the age of sixteen. The court sentenced him to five years of initial confinement and five years of extended supervision on count one, and the same sentence [was] imposed and stayed on count two, with ten years of probation. Campbell filed a motion for postconviction relief on the basis that the court had relied on inaccurate information when it sentenced him…. The circuit court denied the motion for postconviction relief without a hearing, finding that the sentencing court had not relied on the inaccurate information.

State v. Campbell, No. 2003AP367-CRNM, unpublished op. and order at 2 (WI App Aug. 14, 2003) (footnote omitted). We concluded that there were no arguably meritorious appellate issues and summarily affirmed the judgment and order. ***Id.***

Campbell's extended supervision was revoked in 2006 and again in 2008. As a result of the 2008 revocation, Campbell was reconfined for the maximum amount of time available, which was more than three years.

Campbell's appellate counsel filed a no-merit appeal from the reconfinement order. We again concluded that there were no arguably meritorious appellate issues and summarily affirmed the order. *See* ***State v. Campbell***, No. 2009AP1902-CRNM, unpublished op. and order at 2 (WI App Sept. 1, 2010).

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

Nearly six years later, Campbell, *pro se*, filed the "petition for redress" that underlies this appeal. He argued that his sentences exceeded the maximum allowed by statute and that he was illegally placed on electronic monitoring without a court order. The circuit court dismissed Campbell's petition, and this appeal follows.

Discussion

Campbell renews the arguments set forth in his petition. We first address Campbell's claim that the circuit court entered an illegal sentence. He argues that WIS. STAT. § 940.225(3) (1999-2000) only allows a court to sentence a defendant up to a maximum of ten years of imprisonment.

Our supreme court has made clear that a court has the power to correct an illegal or a void sentence at any time. *See* ***State v. Stenklyft***, 2005 WI 71, ¶60, 281 Wis. 2d 484, 697 N.W.2d 769. Campbell's argument requires us to interpret and apply a sentencing statute. *See* ***State v. Larson***, 2003 WI App 235, ¶3, 268 Wis. 2d 162, 672 N.W.2d 322. The meaning of a statute is a question of law that we review *de novo*. *See* ***id.***

At the outset, we note that Campbell represents that he was initially charged with and pled no contest to one count of third-degree sexual assault. In actuality, he was initially charged with two counts of second-degree sexual assault of a child, and he ultimately pled no contest to two counts of third-degree sexual assault. *See* WIS. STAT. § 940.225(3) (1999-2000).

On count one, the circuit court sentenced Campbell to ten years of imprisonment, comprised of five years of initial confinement and five years of extended supervision. On count two, the circuit court imposed and stayed a sentence of ten years of imprisonment, again

comprised of five years of initial confinement and five years of extended supervision, and it placed Campbell on ten years' probation to be served consecutive to his sentence on count one.

The parties are in agreement that at the time Campbell committed the crimes, third-degree sexual assault was classified as a Class D felony and carried a maximum sentence of ten years of imprisonment. *See* WIS. STAT. §§ 940.225(3), 939.50(3)(d) (1999-2000). At issue in this appeal, is Campbell's sentence on count two. According to Campbell, "the [ten] year [p]robation order is part of the overall sentence that exceeded the maximum allowed by [WIS. STAT. §] 940.225(3)[,] which only allow[s] a sentence of a maximum of [ten] years."

Campbell is wrong. First, "[p]robation is not a sentence; it is an alternative to sentence." ***State v. Edwards***, 2013 WI App 51, ¶7, 347 Wis. 2d 526, 830 N.W.2d 109. Second, as highlighted by the State, the circuit court was allowed to impose a ten-year term of probation pursuant to WIS. STAT. § 973.09(2)(b)1. (1999-2000). *See* ***id.*** ("The original term of probation shall be … for felonies, not less than one year nor more than either *the statutory maximum term of imprisonment* for the crime or [three] years, whichever is greater.") (emphasis added). The circuit court could have added an additional year to Campbell's term of probation had it been so inclined. *See* § 973.09(2)(b)2. (1999-2000) ("If the probationer is convicted of [two] or more crimes, including at least one felony, at the same time, the maximum original term of probation may be increased by one year for each felony conviction."). Campbell effectively concedes the State's position by his failure to file a reply brief. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded).

Contrary to Campbell's assertions, the circuit court did not enter an illegal sentence when it ordered him to serve a ten-year term of probation.

Next, Campbell claims that while he was serving the extended supervision portion of his sentence, a GPS monitor was placed on him illegally in violation of the Fourth Amendment prohibition against unreasonable seizures. The State submits that the Department of Corrections (DOC) was responsible for placement of the GPS monitor and that if Campbell had an objection to it, he was obliged to take it up with DOC or file a civil claim for relief. *See* ***State ex rel. Macemon v. McReynolds***, 208 Wis. 2d 594, 596 n.1, 561 N.W.2d 779 (Ct. App. 1997) (The appropriate forum for challenging rules of supervision imposed by the DOC is through a petition for writ of certiorari.). Once again, Campbell concedes this by failing to refute the State's argument.[2] *See* ***Charolais Breeding Ranches***, 90 Wis. 2d at 109.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals

[2] In light of this conclusion, we do not address the State's mootness argument. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (if a decision on one point disposes of the appeal, we need not address the other issues raised); *see also* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) ("[C]ases should be decided on the narrowest possible ground.").