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DISTRICT I

July 27, 2017

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

2016AP1159

State of Wisconsin v. Ezra Charles Martin, Jr.
(L.C. # 1990CF900607)

Before Brennan, P.J., Kessler and Brash, 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).

Ezra Charles Martin, Jr., *pro se*, appeals an order denying his motion for postconviction relief. He also appeals an order denying his motion for reconsideration. Martin challenges the circuit court's decision denying him relief from a restitution order entered in this case in 1991.

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.

On April 27, 1990, after a guilty plea, Martin was convicted of second-degree recklessly endangering safety and possession of a short-barreled shotgun. The circuit court sentenced Martin to eighteen months of imprisonment for possession of the shotgun. The court withheld sentence for recklessly endangering safety, and placed Martin on probation for three years, to be served consecutively. On March 25, 1991, the circuit court ordered Martin to pay \$42,102 in restitution to the victim for hospital bills. Martin was discharged from supervision in 1997.

On March 22, 2016, Martin filed a *pro se* postconviction motion asking the circuit court to relieve him from all or part of the 1991 restitution order. Martin argued that enforcement of the dormant restitution obligation was unfair because he was not aware of it until a 2015 parole hearing on a subsequently imposed drug offense. He also argued that the large financial obligation would make his transition back to society more difficult because he has never held a job outside prison. The circuit court denied the motion, reasoning that even if Martin did not have actual knowledge of the restitution obligation, he should have been aware of it because the Department of Corrections extended his probation term for two years in 1995 on the ground that he had not paid restitution.

On appeal, Martin has fleshed out his argument. He contends that the restitution order should not be enforced because it was not converted to a civil judgment against him. He argues that WIS. STAT. § 973.09 grants the circuit court broad discretion in imposing conditions of

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

probation, but it does not authorize the circuit court to order the payment of an outstanding restitution obligation after discharge from a sentence, absent a civil judgment.

When a circuit court places a defendant on probation, it “may impose any conditions which appear to be reasonable and appropriate.” WIS. STAT. § 973.09(1)(d). The Wisconsin Supreme Court has explained that “[t]his statute authorizes the imposition of restitution in a proper case as a reasonable and appropriate condition of probation.” *Huggett v. State*, 83 Wis. 2d 790, 796, 266 N.W.2d 403 (1978). “Restitution ordered ... is a condition of probation ... for a crime for which the defendant was convicted.” WIS. STAT. § 973.20(1r). “After the termination of probation ... restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution.” *Id.* Because the 1991 restitution order has not been converted to a civil judgment in favor of the victim, Martin is correct that it is not enforceable as a *civil judgment*. Here, however, the circuit court was not asked whether the restitution order was enforceable as a civil judgment; Martin asked the circuit court to grant him relief from the restitution component of the *underlying criminal judgment*. Martin has not shown that the circuit court erred in denying his motion to relieve him from the restitution component of the underlying criminal judgment.

Martin next argues that the Parole Commission does not have the authority to make payment of the restitution in this discharged case a condition of release in the unrelated drug case. Martin did not raise this issue in the circuit court, so we do not consider it. *See State v. Polashek*, 2002 WI 74, ¶25, 253 Wis. 2d 527, 646 N.W.2d 330 (issues not raised in the circuit court are waived). Moreover, the Commission’s letter submitted by Martin does not say that the Commission has made payment of the 1991 restitution obligation a condition of early release on parole for Martin’s subsequent drug conviction. To the contrary, the June 29, 2016 letter says

that the Commissioner conducting Martin's parole review simply noted that Martin had some substantial restitution obligations and "encouraged [Martin] to make some efforts to address these obligations at the earliest opportunity."²

Upon the foregoing,

IT IS ORDERED that the orders of the circuit court are summarily affirmed.

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

Diane M. Fremgen
Clerk of Court of Appeals

² Martin has been paying restitution from prison in an unrelated criminal case.