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DISTRICT I

August 25, 2017

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

2016AP1374

State of Wisconsin v. Quentin C. Ward (L.C. # 1994CF940199)

Before Brennan, P.J., 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).

Quentin C. Ward, *pro se*, appeals the circuit court's order denying his motion for collateral postconviction relief. He argues: (1) requiring him to register as a sex offender violates his constitutional rights; (2) requiring him to pay an annual sex offender registration fee of \$100 is unlawful; and (3) his judgment of conviction incorrectly states that his sentence on count three is consecutive rather than concurrent. 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.

Ward was convicted of first-degree recklessly endangering safety, second-degree sexual assault, and armed robbery on March 31, 1994. Ward has filed multiple postconviction motions and appeals since his conviction. As pertains to this appeal, Ward filed a postconviction motion on June 16, 2016, arguing that the law requiring him to register as a sex offender is unconstitutional. The circuit court denied the motion on June 22, 2016. Ward appealed the order on July 6, 2016. On August 29, 2016, Ward filed a separate postconviction motion arguing that his sentence on count three was imposed concurrently, not consecutively. The circuit court denied the motion on September 21, 2016. Ward did not appeal that order.

Ward first argues that the law requiring him to register as a sex offender is unconstitutional. Ward was convicted on March 31, 1994, of second-degree sexual assault contrary to WIS. STAT. § 940.225(2)(a) (1993-94). At that time, WIS. STAT. § 175.45(1)(a) (1993-94), required anyone who was convicted pursuant to § 940.225(1) or (2) after December 25, 1993, to register as a sex offender. Because the law requiring registration was in effect when Ward was convicted, there was no *ex post facto* application of the registry law.

To the extent that Ward is arguing that his constitutional rights have been violated because the legislature expanded public access to the sex offender registry when it revised and renumbered the registry statute as WIS. STAT. § 301.45(1g) after he was convicted, that argument is unavailing. The Wisconsin Supreme Court has ruled that sex offender registration does not

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

constitute punishment. See *State v. Bollig*, 2000 WI 6, ¶¶21-27, 232 Wis. 2d 561, 605 N.W.2d 199. A statute that is not punitive does not violate the Double Jeopardy or *Ex Post Facto* Clauses of the United States Constitution. *State v. Rachel*, 2002 WI 81, ¶¶20-22, 254 Wis. 2d 215, 647 N.W.2d 762. Therefore, the sex offender registry law is not unconstitutional.

Ward next challenges the \$100 annual sex offender registration fee imposed on him. First, he contends the law requiring him to register as a sex offender is unconstitutional so he should not have to pay the fee. We rejected Ward's constitutional claim above, so we reject this argument. Second, Ward argues that he should not be required to pay the annual registration fee because the circuit court never ordered him to do so. We reject this argument because a statute authorizes the Department of Corrections to impose this fee without a court order. See WIS. STAT. § 301.45(10). Third, Ward argues that the fee cannot be assessed against him because he is incarcerated. Ward did not raise this argument in the circuit court. Therefore, we will not consider it. See *Jackson v. Benson*, 218 Wis. 2d 835, 901, 578 N.W.2d 602 (1998).

Finally, Ward argues that his judgment of conviction erroneously states that his sentence on count three is to be served consecutively, rather than concurrently. Ward did not file a notice of appeal from the circuit court's order dated September 21, 2016, denying his motion for postconviction relief raising this sentencing argument. Because Ward did not appeal the circuit court's order, we will not consider issues related to the circuit court's decision. See WIS. STAT. RULE 809.10(4).

IT IS ORDERED that the order of the circuit court 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