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**DISTRICT I**

December 19, 2017

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

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2016AP1612-CR

State of Wisconsin v. Johnel Edward Grimes, Jr.  
(L.C. # 2015CF3816)

Before Brennan, P.J., Kessler 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).**

Johnel Edward Grimes, Jr., *pro se*, appeals a postconviction order in which the circuit court refused to modify its finding that he was ineligible for the Wisconsin substance abuse program. Upon our review of the briefs and record, we conclude at conference that this matter is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We summarily affirm.

According to the criminal complaint, police executed a search warrant at a Milwaukee residence in August 2015. The officers found Grimes lying on a mattress and holding \$1,427.00. On the floor beside him were a loaded gun, nearly eight grams of cocaine base, and a baggie containing three-quarters of a gram of marijuana. The complaint went on to allege that Grimes previously was convicted of a felony and that the conviction remained of record. Attached to the complaint was a certified copy of a judgment showing a prior felony conviction in April 2005.

The State charged Grimes on August 26, 2015, with one count of possessing a firearm while a felon and one count of possessing with intent to deliver more than five but not more than fifteen grams of cocaine while armed with a dangerous weapon. *See* WIS. STAT. §§ 941.29(2)(a) (2013-14),<sup>2</sup> 961.41(1m)(cm)2., 939.63(1)(b). Grimes pled guilty as charged.

At sentencing, the parties stood silent as to the appropriate length of extended supervision and jointly recommended four years of initial confinement. Grimes, by counsel, also asked the court to declare him eligible for the Wisconsin substance abuse program.<sup>3</sup> After the parties

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

<sup>2</sup> The 2015-16 version of the Wisconsin statutes reflects amendments to WIS. STAT. § 941.29 that took effect on November 13, 2015, after the State charged Grimes in this case. *See* 2015 Wis. Act 109, §§ 6-16; WIS. STAT. § 991.11. Accordingly, we cite the 2013-14 version of § 941.29.

<sup>3</sup> The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05; 973.01(3g). In the circuit court proceedings, Grimes referred to the program by its former name, and in this court, his references are inconsistent. For ease of discussion, we use the program's current name throughout this opinion.

spoke, the circuit court made extensive sentencing remarks and then imposed an aggregate nine-year term of imprisonment, bifurcated as four years of initial confinement and five years of extended supervision. The circuit court also found Grimes ineligible for the Wisconsin substance abuse program.

Some months after sentencing, Grimes filed a *pro se* motion (which he designated a “petition”) asking the circuit court to reconsider its decision finding him ineligible to participate in the Wisconsin substance abuse program. The circuit court denied the motion, and Grimes appeals.

The Wisconsin substance abuse program is a prison treatment program, and an inmate who successfully completes it may convert his or her remaining initial confinement time to extended supervision time. *See* WIS. STAT. §§ 302.05(1)(am), 302.05(3)(c)2. Pursuant to statute, a person convicted of certain specified crimes is disqualified from participating in the program. *See* § 302.05(3)(a)1. Grimes’s convictions did not statutorily disqualify him from participation. *See id.* When sentencing a person who is not statutorily disqualified, the circuit court is required to determine, in the exercise of its discretion, whether the person is eligible to participate in the program. *See* WIS. STAT. § 973.01(3g); *see also State v. Owens*, 2006 WI App 75, ¶¶6-7, 291 Wis. 2d 229, 713 N.W.2d 187.

On appeal, Grimes contends the circuit court believed he “was not statutor[il]y eligible for the [s]ubstance [a]buse [p]rogram” and therefore barred him from participating “based on a mistake of law.” A defendant has a due process right to be sentenced upon accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. To establish a denial of this right, however, the defendant must show that the sentencing court actually relied on

inaccurate information. *See id.*, ¶26. Grimes points to nothing in the record, and we see nothing, suggesting in any way that the circuit court thought Grimes was disqualified by statute from participating in the Wisconsin substance abuse program. Accordingly, his claim must fail.

Moreover, the record shows that the circuit court appropriately exercised discretion in finding him ineligible for the Wisconsin substance abuse program. A circuit court's decision regarding eligibility for the program represents an appropriate exercise of discretion "so long as the overall sentencing rationale ... justifies the ... determination." *Owens*, 291 Wis. 2d 229, ¶9. To properly exercise sentencing discretion, a circuit court must identify the objectives of the sentence. *See State v. Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See id.* The circuit court has discretion to determine both the factors that are relevant to the sentencing decision and the weight to assign to each relevant factor. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. Strong public policy militates against appellate interference with a circuit court's sentencing discretion, and we presume the circuit court acted reasonably in exercising that discretion. *See id.*, ¶7.

In this case, the circuit court identified protection of the community as the "first and foremost" sentencing goal. The circuit court also identified the goals of punishing Grimes for his conduct, fostering his rehabilitation, and deterring others from committing similar crimes. The circuit court properly considered how the primary sentencing factors affected the stated goals. The circuit court discussed the gravity of the offenses, noting that Grimes was caught with a

“significant” quantity of cocaine and that the circumstances of the crimes were aggravated because he not only possessed a firearm while prohibited from doing so, but also had it loaded and within his reach when police executed the search warrant. In considering Grimes’s character, the circuit court acknowledged that he was cooperative during his arrest and that he quickly accepted responsibility for his behavior. Weighing against those mitigating factors, however, were Grimes’s two prior felony convictions, one of which also involved possessing with intent to deliver cocaine. *See State v. Fisher*, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (substantial criminal record is evidence of character). The circuit court found the prior cocaine offense particularly troubling because it reflected that Grimes “committed this same type of crime in the past and ... did not reform his conduct.” The circuit court went on to identify a “high need to protect the public” because Grimes was “distributing a poison” to the community and “increasing the danger” to neighborhood residents by bringing guns and drug dealing to the area. The circuit court therefore determined that four years of initial confinement was “the minimum [amount] ... of initial confinement necessary.”

The circuit court then considered but rejected Grimes’s request to be found eligible for the Wisconsin substance abuse program. The circuit court recognized the “signs that Grimes has his own substance abuse issues,” but the circuit court concluded that his treatment needs were outweighed by other concerns. In the circuit court’s view, the term of initial confinement imposed was “necessary to accomplish the sentencing goals and ... early release would be contrary to the sentencing goals.”

In sum, the circuit court considered appropriate and relevant factors in fashioning Grimes’s aggregate sentence and concluded that any disposition potentially resulting in less than four years of initial confinement would undermine the purposes of that sentence. Accordingly,

the circuit court properly exercised discretion by declaring Grimes ineligible for the Wisconsin substance abuse program to ensure that he served the necessary period of initial confinement.

See *Owens*, 291 Wis. 2d 229, ¶9.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed.

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*