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DISTRICT II

January 10, 2018

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

2017AP496-CR

State of Wisconsin v. Peter J. Long (L.C. # 2011CF345)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Peter J. Long appeals pro se from an order denying his petition for sentence adjustment. 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 conclude that the circuit court properly denied Long’s petition. Accordingly, we affirm its order.

In 2013, Long was convicted following a guilty plea to operating a motor vehicle while intoxicated as an eighth offense. The circuit court sentenced him to five years of initial confinement and five years of extended supervision.

In February 2017, Long filed a petition for sentence adjustment under WIS. STAT. § 973.195. In it, he alleged that his prison conduct and progress in rehabilitation supported his request for early release. The prosecutor filed a response objecting to Long’s petition.

Ultimately, the circuit court denied Long’s petition for sentence adjustment on the ground that it was “not in the public interest.” It explained that Long needed to serve his entire sentence to effectuate the purposes/objectives of the sentencing court, which included protection of the public and punishment. It further explained that early release “would unduly depreciate the seriousness of the offense.” Long filed a motion for reconsideration, which was also denied. This appeal follows.²

On appeal, Long challenges the circuit court’s decision denying his petition for sentence adjustment. He accuses the court of failing to take into account the individual factors of his case. He also accuses the court of improperly considering the prosecutor’s objection to his petition.

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

² We assume without deciding that Long has an appeal of right from the order denying his petition for sentence adjustment. *See* WIS. STAT. § 808.03(1) (final orders may be appealed as a matter of right).

The decision to grant or deny a petition for sentence adjustment involves the exercise of the circuit court's discretion. See *State v. Stenklyft*, 2005 WI 71, ¶112, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring/dissenting). We will not overturn a circuit court's discretionary decision absent an erroneous exercise of discretion and will generally look for reasons to sustain such determinations. See *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433; *Steinbach v. Gustafson*, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993).

Here, we are satisfied that the circuit court properly exercised its discretion in denying Long's petition for sentence adjustment. The record reveals that the court carefully considered the intent of the sentencing court and nature of the offense. In doing so, it plainly took into account the individual factors of Long's case. Moreover, there is nothing improper about a court considering a prosecutor's objection to a petition for sentence adjustment so long as it recognizes that it is not bound by it. See *Stenklyft*, 281 Wis. 2d 484, ¶¶82-83 (Abrahamson, C.J., concurring/dissenting). The record makes clear that the court did not view the prosecutor's objection as controlling. Accordingly, we affirm its order.³

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

³ To the extent we have not addressed an argument raised by Long on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

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

Diane M. Fremgen
Acting Clerk of Court of Appeals