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**DISTRICT II**

February 28, 2018

To:

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

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2017AP1116-CR                      State of Wisconsin v. Dennis H. Murphy (L.C. #2001CF266)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).**

The circuit court denied Dennis H. Murphy's pro se motion for Positive Adjustment Time (PAT) under WIS. STAT. § 973.198 (2015-16).<sup>1</sup> Still pro se, Murphy appeals. As a violent offender serving consecutive sentences for two class C felonies, Murphy is statutorily ineligible

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<sup>1</sup> The court used the form for an Order Concerning Sentence Adjustment pursuant to WIS. STAT. § 973.195. All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

for PAT. Upon reviewing the briefs and the record, we conclude at conference the case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm the order.

While both were drunk, Murphy beat a man into unconsciousness and left him unattended for over twelve hours; the man died the next day. A jury convicted Murphy of first-degree reckless homicide, aggravated battery, and obstructing an officer; he was sentenced to sixty years' imprisonment. This court concluded that Murphy's trial counsel was ineffective, reversed his convictions, and remanded for a new trial. On remand, Murphy pled no contest to second-degree reckless homicide and aggravated battery. He now is serving a thirty-year prison sentence—twenty years' initial confinement and ten years' extended supervision.

Murphy petitioned for PAT under WIS. STAT. § 973.198(1), which permits courts to adjust a sentence based on the number of positive adjustment days earned between October 1, 2009, and August 3, 2011.<sup>2</sup> The circuit court determined that sentence adjustment was not in the public interest and denied Murphy's request.

We review a circuit court's decision granting or denying a petition for PAT for an erroneous exercise of discretion. *See State ex rel. Singh v. Kemper*, 2014 WI App 43, ¶23, 353 Wis. 2d 520, 846 N.W.2d 820, *rev'd in part on other grounds*, 2016 WI 67, ¶1 n.1, 371 Wis. 2d 127, 883 N.W.2d 86. We will not reverse a circuit court's discretionary decision unless the court

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<sup>2</sup> In 2009, the legislature passed a law allowing offenders convicted of certain crimes to earn PAT during the terms of their initial confinement but repealed the law in 2011. *See State v. Carroll*, 2012 WI App 83, ¶¶3-4, 343 Wis. 2d 509, 819 N.W.2d 343. Offenders eligible for PAT who had begun serving their sentences between the enactment of the two acts remained eligible for a potential reduction of confinement time based on already-earned PAT. *Id.*, ¶4.

This is the second petition Murphy filed. He did not appeal the final order denying his first petition. He filed this petition within one year of the first one, contrary to WIS. STAT. § 973.198(6).

erroneously exercised its discretion, and we look for reasons to uphold the court's discretionary call. *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610.

There are several reasons that Murphy is not eligible for PAT. He was convicted of second-degree reckless homicide and aggravated battery, contrary to WIS. STAT. §§ 940.06(1) and 940.19(5) (1999-2000). Violations of §§ 940.06 and 940.19(5) are violent offenses. WIS. STAT. § 301.048(2)(bm)1. (2009-10). Murphy is a violent offender. WIS. STAT. §§ 302.113(2)(b)6., 16.694(12)(a) (2009-10).<sup>3</sup> When he committed the offenses, both were Class C felonies. Secs. 940.06(1) and 940.19(5) (1999-2000). PAT is not available to a person convicted of a violent offense, “[a] violent offender, as defined in [§] 16.964.(12)(a), “[a] person who is serving ... a sentence for a Class C ... felony,” or to a person serving a sentence for a violation of § 940.06 (2009-10). WIS. STAT. §§ 302.113(2)(b), 302.113(2)(b)6., 302.113(2)(b)8., and 304.06(1)(bg)2.j. (2009-10); *see also* WIS. ADMIN. CODE § DOC 302.35(2)(j) (Dec. 2017).

The certificates of completion Murphy submits as proof of his self-betterment efforts do not alter his statutory ineligibility for PAT. Because his claim of entitlement to PAT is meritless, we need not address his further claims that he was denied due process because certain exhibits were not given to the circuit court and that the court used the wrong form to deny his petition. We also need not address the State's claim that this appeal should be barred. The circuit court's denial of his petition reflects a proper exercise of discretion.

Upon the foregoing reasons,

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<sup>3</sup> WISCONSIN STAT. §16.964(12)(a) (2009-10) defined “violent offender” as a person “convicted of an offense” where the person “used force against another person, or a person died or suffered serious bodily harm.”

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*