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DISTRICT II

March 14, 2018

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

2016AP2029

State of Wisconsin v. Ricky McMorris (L.C. #2011CF185)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Ricky McMorris appeals from a circuit court order denying his motion to be released from a 2011 sentence. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21

(2015-16).¹ We affirm the circuit court because McMorris remains subject to the unambiguous 2011 sentence structure, and he has not yet completed his 2011 sentence.

McMorris's challenge arises from sentences imposed in two cases: *State v. McMorris*, Racine County circuit court case No. 2000CF1030 (the 2000 case), and *State v. McMorris*, Racine County circuit court case No. 2011CF185 (the 2011 case). McMorris seeks relief from his 2011 sentence. In 2005, the circuit court sentenced McMorris in the 2000 case to eight years of incarceration. Due to new crimes and revocations, the 2000 sentence was not discharged until January 14, 2016. In the 2011 case, the court sentenced McMorris to eight months in jail consecutive to the sentence McMorris was then serving and three years of probation with a stayed sentence to be served consecutively to the eight months of jail time. McMorris was discharged from the eight-month jail term on April 4, 2016, and he then began serving his three-year probation term, which is currently scheduled to end on April 4, 2019.

In July 2016, McMorris moved the circuit court to release him from his 2011 sentence because the circuit court did not impose any sentence or probation term consecutive to the 2000 case. The circuit court disagreed, as do we.

At McMorris's November 22, 2011 sentencing, the circuit court stated:

The Court is going to impose the immediately punitive and deterrent consequence on the charge of resisting and is going to order that you are to be sentenced to the county jail for a period of 8 months to run consecutively to the sentence that you are presently serving. With respect to the charge of possession of cocaine as repeat drug offender the Court is going to follow the state's recommendation of sentencing and impose sentence in the

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

total length of 3 and one-half years. That is to consist of 1 and a half years of initial confinement followed by 1 and one half years of extended supervision. That is imposed consecutively to the sentence imposed on the resisting charge but will be stayed and you will be placed on probation for a period of three years.

In denying McMorris's motion to be released from his 2011 sentence, the circuit court relied upon the sentencing remarks excerpted above. The court found that the 2011 sentencing court ordered the sentences to be served consecutively to the sentence already being served at that time. The court further found that the 2011 consecutive jail and probation terms started once McMorris completed his 2000 sentence on January 14, 2016. McMorris appeals.

On appeal, McMorris argues that the 2011 sentencing court's sentence structure is unclear and ambiguous. We consider whether the 2011 sentencing court's oral pronouncement is ambiguous and whether it conflicts with the judgment of conviction. See *State v. Oglesby*, 2006 WI App 95, ¶16, 292 Wis. 2d 716, 715 N.W.2d 727. We conclude that the oral pronouncement, excerpted above, is clear and unambiguous: the 2011 sentences were ordered to be served consecutively to any sentence McMorris was then serving, which included the sentence in the 2000 case. We further conclude that the oral pronouncement is not in conflict with the judgment of conviction. McMorris has not shown any basis for relief from the 2011 sentence.

McMorris argues that he should be released from his 2011 probation term in the interest of fairness. McMorris did not make this argument to the circuit court. We decline to consider this argument which is raised for the first time on appeal. *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.

Upon the foregoing reasons,

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.

Sheila T. Reiff
Clerk of Court of Appeals