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DISTRICT IV

October 17, 2018

To:

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

2017AP1504

State of Wisconsin v. Willie C. Simpson (L.C. # 2011CF220)

Before Lundsten, P.J., Sherman and Fitzpatrick, 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).

Willie Simpson appeals an order denying his postconviction motion filed under Wis. STAT. § 974.06. 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.

In the current case, Simpson was convicted of six counts of a prisoner throwing or expelling bodily substances, as a repeater. Some of the sentences were made consecutive to prior sentences. Simpson was previously serving two consecutive, indeterminate sentences of twenty-five years for sexual assault of a child, imposed in 2000.

Simpson first argues that he could not properly be sentenced as a repeater in this case because the sexual assault convictions are void due to lack of subject matter jurisdiction. Simpson argues that there was no jurisdiction because the complaint was not properly filed with the clerk of the circuit court, as shown by the absence of a file stamp.

This argument fails because the court was not required to use the repeater enhancement to sentence Simpson for the total length of time that it did. The court used the enhancer to impose two consecutive initial confinements of two and one-half years, for a total of five years. Then the court also imposed four concurrent sentences. However, even if the court had not used the enhancer, but still wanted to impose five years of initial confinement, it could have done that without the enhancement, by imposing a third sentence as a consecutive one, instead of concurrently. Therefore, we conclude that, if there was any error in the earlier criminal complaint, it was harmless. *See State v. Sherman*, 2008 WI App 57, ¶8, 310 Wis. 2d 248, 750 N.W.2d 500 (harmless error rule applies to sentencing errors).

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

Simpson's second argument is that an ex post facto violation has occurred because imposition of the sentences in this case has led the Department of Corrections to recalculate his sentences from the sexual assault case in a way that will eliminate the possibility of parole on those sentences, and require him to serve the full fifty years of those sentences in confinement.

We conclude that this issue is not properly before us. This appeal is from denial of a postconviction motion under WIS. STAT. § 974.06 that was directed at Simpson's most recent convictions. Simpson's ex post facto argument does not identify any way in which these convictions themselves are contrary to law and should be vacated. Instead, Simpson's argument appears to be directed more at the administrative action of the department in computing his sentence structure and the laws that Simpson asserts were the reason for that recalculation decision. That is not a decision that we may reach in review of a postconviction motion under § 974.06.

Finally, Simpson argues that the court erred by not holding an evidentiary hearing. In light of the manner in which we have disposed of the above issues, we do not see any disputable issue of fact for which an evidentiary hearing might be necessary.

In a motion for summary reversal that Simpson filed after briefing in this appeal, he repeats arguments we have already addressed.

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion for summary reversal is denied.

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

Sheila T. Reiff
Clerk of Court of Appeals