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DISTRICT IV

October 17, 2018

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

2017AP838

State of Wisconsin v. Eddie D. Cannon (L.C. # 1991CF159A)

Before Lundsten, P.J., Blanchard 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).

Eddie Cannon, pro se, appeals an order that denied Cannon's challenge to his sentence on grounds that the circuit court improperly applied two penalty enhancements at sentencing, and

the court's order denying reconsideration.¹ 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. We summarily affirm.

In 1992, Cannon was convicted of conspiracy to deliver cocaine. The circuit court sentenced Cannon to sixteen years of imprisonment by imposing the maximum sentence for the offense of conspiracy to deliver cocaine and applying two penalty enhancements: one because the conspiracy to deliver cocaine was a delivery of cocaine to a prisoner, and the second because Cannon had a prior felony conviction within the previous five years. *See* WIS. STAT. §§ 161.41(1)(c)1. and (1x) (1991-92) (providing that conspiracy to deliver cocaine is punishable by up to five years of imprisonment); 161.465(2) (1991-92) (providing that, if the crime of delivery of cocaine is based on delivery to prisoners, the maximum term of imprisonment is doubled); and 939.62(1)(b) (1991-92) (providing that a repeater is subject to an additional six years of imprisonment if the prior conviction was for a felony). In July 2016, Cannon filed a motion to correct an illegal sentence, challenging the application of the two penalty enhancements. The court denied the motion. In April 2017, Cannon moved for reconsideration, again arguing that the court improperly applied two penalty enhancements at sentencing. The court denied the request for reconsideration.

¹ The State points out that we issued an order on July 5, 2017, noting that there was no written order denying reconsideration in the record and that a written order was necessary for this court to review the issues raised in the motion for reconsideration. In reply, Cannon points out that he moved to supplement the record with multiple missing documents, and that this court issued two orders for the clerk of the circuit court to supplement the record. Subsequent to briefing, this court received an additional supplement to the record consisting of the circuit court's April 19, 2017 order denying reconsideration and the circuit court's earlier April 11, 2014 order denying Cannon's prior WIS. STAT. § 974.06 (2015-16) motion. Thus, this court has jurisdiction to review the order denying reconsideration. All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Cannon contends that the circuit court illegally applied two penalty enhancements at sentencing. Cannon first contends that, under *State v. Ray*, 166 Wis. 2d 855, 481 N.W.2d 288 (Ct. App. 1992), the circuit court was not authorized to apply the habitual criminal penalty enhancement after the court applied the penalty enhancement for delivery to a prisoner. Cannon then contends that, under *Ray*, the court was authorized to apply only one penalty enhancement. We are not persuaded.

In *Ray*, the circuit court had applied two penalty enhancements to Ray's sentence for conspiracy to deliver cocaine: one enhancement because the conviction was for a second or subsequent drug offense, and a separate enhancement because Ray was a habitual criminal based on his prior drug conviction. *Id.* at 871-74. We explained that it was improper for the circuit court to apply two enhancements based on Ray's single prior conviction because both were "repeater" statutes that served the same purpose: "to increase the punishment of those persons who do not learn their lesson or profit by the lesser punishment given for their prior violations of the criminal laws, and to serve as a warning to first-time offenders." *Id.* at 872. Here, by contrast, Cannon was subject to only one *repeater* penalty enhancement based on having a prior felony conviction. Cannon was subject to another penalty enhancement because he was convicted of conspiracy to deliver cocaine *to a prisoner*. Because only one of the penalty enhancements was based on a repeater statute, the application of the two penalty enhancements was not improper under *Ray*.

Cannon also contends that the circuit court relied on inaccurate information at sentencing. However, Cannon did not pursue an argument that he was sentenced based on inaccurate information in his July 2016 motion to correct an illegal sentence or his April 2017 motion for reconsideration. Cannon's argument that he was sentenced based on inaccurate information is

therefore not properly before us in this appeal.² See *State v. Hayes*, 2004 WI 80, ¶21, 273 Wis. 2d 1, 681 N.W.2d 203 (explaining that, as a general matter, a litigant must raise arguments in the circuit court to preserve those arguments for appeal).

Therefore,

IT IS ORDERED that the orders are 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

² In Cannon's April 2017 motion for reconsideration, Cannon stated in summary fashion that he had argued in a December 2013 WIS. STAT. § 974.06 motion that he was sentenced based on inaccurate information. To the extent that Cannon is seeking to pursue in this appeal the arguments that Cannon raised in his December 2013 motion, those arguments are not properly before us. The circuit court denied Cannon's December 2013 motion by order dated April 11, 2014. After Cannon wrote to the circuit court inquiring into the status of his motion, the court issued an order denying reconsideration of its April 2014 decision. Cannon contends that the circuit court did not issue an order in April 2014, and that the November 2014 order was the order denying his December 2013 motion. In any event, Cannon did not timely appeal the April 2014 or November 2014 final orders as to his December 2013 motion. Accordingly, the issues raised in the December 2013 motion are not before us in this appeal. See WIS. STAT. §§ 809.10(1)(e) (timely notice of appeal necessary to give this court jurisdiction over appeal); and (4) ("An appeal from a final judgment or final order brings before the court all prior *nonfinal* judgments, orders and rulings adverse to the appellant." (emphasis added)).

To the extent that Cannon seeks to raise other issues on appeal that were not raised below, those issues as well are not considered in this opinion. See *State v. Hayes*, 2004 WI 80, ¶21, 273 Wis. 2d 1, 681 N.W.2d 203. Additionally, to the extent that the motion for reconsideration raised other issues that Cannon has not pursued on appeal, those issues are deemed abandoned and not considered in this opinion. See *Reiman Assocs., Inc. v. R/A Advert. Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981). Finally, we decline to consider issues that were referenced on appeal but inadequately briefed to warrant a response. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).