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DISTRICT IV

January 16, 2019

To:

Hon. Rhonda L. Lanford
Circuit Court Judge
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Chad A. Renier
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You are hereby notified that the Court has entered the following opinion and order:

2018AP1152

State of Wisconsin ex rel. Chad A. Renier v. Jon Litscher
(L.C. # 2017CV2057)

Before Blanchard, Kloppenburg, 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).

Chad Renier, pro se, appeals a circuit court order denying his petition for certiorari review of the Department of Corrections' determination that Renier is statutorily ineligible for early release programs. Renier also appeals a circuit court order denying his motion to reconsider. Renier argues that the department's determination impermissibly conflicts with the sentencing court's prior finding that Renier was eligible for early release programs. 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 reject Renier’s arguments and affirm.

Renier was convicted of two counts of second degree sexual assault of a child and one count of child enticement-sexual contact. The sentencing court² was required to make a discretionary determination about whether Renier should be considered eligible for the earned release program and the challenge incarceration program (which we refer to collectively as “early release programs” or “ERP”). *See* WIS. STAT. § 973.01(3g) and (3m).³ The sentencing court found Renier eligible “with the further understanding ... that if there are other statutory prohibitions that do not allow you to be eligible, I’m not superseding those requirements.” The department subsequently determined that Renier was statutorily ineligible for early release programs because of the offenses that Renier had committed.

After pursuing administrative remedies with the department, Renier filed a petition for certiorari review in the circuit court. The circuit court denied Renier’s petition. Renier filed a motion to reconsider, which the circuit court denied. Renier appeals.

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

² Renier was sentenced by the Honorable Gregory B. Gill, Jr., circuit court judge for Outagamie County. Renier filed his certiorari petition in Dane County circuit court, where it was heard by the Honorable Rhonda L. Lanford. For clarity, we will refer to Judge Gill as “the sentencing court” and Judge Lanford as “the circuit court.”

³ Under WIS. STAT. § 973.01, “[w]hen imposing a bifurcated sentence ... the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible” to participate in the earned release program. Sec. 973.01(3g). An identical obligation exists for the challenge incarceration program. *See* § 973.01(3m).

Renier argues that the department ignored or violated the sentencing court's order finding him eligible for early release programs. Renier contends that in deeming him ineligible, the department has "implement[ed] conflicting policies to negate a court order." Renier further argues that, at the very least, the department should have petitioned the sentencing court to clarify any ambiguity.

Renier's arguments fail to come to terms with the nature of the sentencing court's determination that Renier was eligible for early release. We have previously explained that the department determines statutory eligibility for early release programs, while "the exercise of discretion as to whether the inmate *should* be included in ERP eligibility is a matter for the [circuit] court." *State v. Johnson*, 2007 WI App 41, ¶14, 299 Wis. 2d 785, 730 N.W.2d 661 (emphasis in original).

Here, in determining Renier's eligibility for early release programs, the sentencing court stated, "[I]f you are eligible, I'm not going to be the prohibition. I think that is certainly appropriate." In other words, the sentencing court exercised its discretion to determine that Renier should be included in the early release programs if he was statutorily eligible. However, the sentencing court expressly stated that it did not intend to supersede the statutory requirements for eligibility. Thus, the sentencing court left it to the department to assess whether there were any statutory bars to Renier's participation. Renier concedes that he is statutorily ineligible for the program. We see no ambiguity that would require the department to seek further clarification. Accordingly, we reject Renier's argument that the department acted improperly when it determined that Renier was ineligible.

Renier also contends that the department should be estopped from making certain procedural arguments in support of the dismissal of his petition for a writ of certiorari. We need not address this aspect of Renier's appeal, because the circuit court considered Renier's petition on the merits and denied it. See *Briggs v. Farmers Ins. Exch.*, 2000 WI App 40, ¶17, 233 Wis. 2d 163, 607 N.W.2d 670 (we need not consider arguments that have been rendered moot). Because we affirm the circuit court's order denying Renier's petition on the merits, the department's procedural arguments for dismissal had no bearing on the outcome. Renier's challenge to the propriety of these arguments is therefore moot.

Upon the foregoing reasons,

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