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DISTRICT II

February 20, 2019

To:

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

2018AP618-CR State of Wisconsin v. Dennis K. McNew (L.C. #2008CF380)

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).

Dennis K. McNew appeals from an order denying his petition for sentence adjustment pursuant to WIS. STAT. § 973.195 (2017-18).¹ Based upon our review of the briefs and record,

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In early 2009, McNew pled no contest to one count of sexual assault of a child under sixteen years of age. McNew received a withheld sentence and was placed on probation. A revocation order was entered in late 2009 due to violations of probation rules, including having sexual intercourse with a fourteen-year-old child. At sentencing after revocation, McNew received a twenty-five-year sentence (ten years' initial confinement, fifteen years' extended supervision).

In 2018, McNew filed a petition for sentence adjustment pursuant to WIS. STAT. § 973.195(1r)(b)1. The State objected to any sentence adjustment. The court considered all relevant factors and denied McNew's petition as not being "in the public interest." McNew appeals.

A court's decision whether to grant a sentence adjustment is examined under an erroneous exercise of discretion standard. *See* WIS. STAT. § 973.195(1r)(c) (the sentencing court *may* deny the petition for sentence adjustment or hold the petition for further consideration); *State v. Stenklyft*, 2005 WI 71, ¶¶81-82, 112, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring in part and dissenting in part, but writing for a majority in holding sentence adjustment is left to the circuit court's discretion). To the extent that McNew makes a due process challenge as to how his petition was addressed, we review that issue de novo. *State v. Silverstein*, 2017 WI App 64, ¶27, 378 Wis. 2d 42, 902 N.W.2d 550.

McNew first argues that the district attorney's objection to sentence adjustment without offering a reason denied McNew "meaningful due process." This argument is without merit as

Wis. STAT. § 973.195 does not create a protectable liberty interest and McNew was given a full opportunity to make his case for sentence adjustment. See *Stenklyft*, 281 Wis. 2d 484, ¶¶71, 74, ¶¶82-83 (Abrahamson, C.J., concurring in part and dissenting in part); see also *Casteel v. McCaughtry*, 176 Wis. 2d 571, 579-80, 583-84, 500 N.W.2d 277 (1993).

McNew next argues against the court’s decision process, which he characterizes as “lazy justice.” We disagree. The court reviewed the submittals by McNew; found facts that certain statutory prerequisites were met; considered the nature of the crime, the character of the defendant, the protection of the public, the position of the State and the victim; considered McNew’s institutional conduct, including that McNew had not yet completed programming “due to [his] current structure”; and considered that McNew had a consecutive four-year sentence to serve upon completion of this sentence. No erroneous exercise of discretion has been shown.

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