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DISTRICT II

April 17, 2019

To:

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

2018AP698-CR

State of Wisconsin v. Martise D. Odems (L.C. #1995CF520)

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).

Martise D. Odems appeals from an order denying his petition to be released from prison to extended supervision under WIS. STAT. §§ 302.114(1) and 304.02(1) (2017-18).¹ Based upon

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

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 affirm the order of the circuit court.

Odems was found guilty by a jury of first-degree intentional homicide and two counts of recklessly endangering safety as a result of crimes committed on May 18, 1995. On April 18, 1996, Odems was sentenced to life in prison under WIS. STAT. § 939.50(3)(a) (1995-96) with eligibility for parole set for April 18, 2036. We affirmed Odems' convictions and sentence on August 18, 1999.

In January 2018, Odems filed the matter before us: a motion made pursuant to WIS. STAT. §§ 302.114(1), (2) and 304.02(1), seeking release to extended supervision and for “special action parole release” due to prison over-crowding under WIS. STAT. § 301.055. The substance of Odems' argument as to extended supervision is that as the sentencing court did not state on the record what subsection of WIS. STAT. § 973.014 the court used to set his parole date, he is eligible to petition for release to extended supervision under § 302.114.²

Odems' arguments relate solely to interpretation of statutes which are questions of law which we review de novo. *State v. Stewart*, 2018 WI App 41, ¶18, 383 Wis. 2d 546, 916 N.W.2d 188.

² On this appeal, Odems also argues that WIS. STAT. § 973.014(1)(b) is an ex post facto violation as it increases the possible minimum parole eligibility date. Section 973.014(1)(b) (first numbered as § 973.014(2)) was enacted in 1988, seven years prior to Odems' crimes in 1995 and therefore was not retrospectively applied to Odems. *See* 1987 Wis. Act 412, §§ 5, 7. We address this frivolous argument no further. We also decline to fully address Odems' petition for release under WIS. STAT. § 304.02 (prison overcrowding). Section 304.02 allows the Department of Corrections to parole inmates who are not serving sentences for assaultive felonies—first-degree intentional homicide is an “assaultive” felony and Odems is categorically not eligible for the Special Action Release Program under § 304.02. *See* § 304.02(1), (3)(b).

We summarily deny Odems' arguments as he is attempting to use truth-in-sentencing statutes, which apply only to "a person [sentenced] to life imprisonment for a crime committed on or after December 31, 1999." WIS. STAT. § 973.014(1g). Odems, having committed his crimes in 1995, was properly sentenced under the indeterminate sentencing structure of § 973.014(1)(b) (1995-96). Stated simply, Odems is not and never will be eligible for extended supervision as he was not sentenced under truth-in-sentencing. The circuit court properly denied his petition seeking release to extended supervision.

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