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DISTRICT II

May 22, 2019

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

2018AP1410-CR State of Wisconsin v. Julian Holt (L.C. #1994CF4)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Julian Holt was convicted of first-degree intentional homicide and sentenced to life in prison with eligibility for parole after thirty-nine years. He appeals pro se from an order denying his petition to be released earlier to extended supervision (ES) under WIS. STAT. §§ 302.114(1),

(2) and 304.02(1) (2017-18),¹ and asserts that his sentence is an ex post facto violation. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm the order.

A jury found Holt guilty of first-degree intentional homicide for stabbing a man over seventy times on January 2, 1994. The trial court sentenced him to life in prison plus five years, consecutive, and made him eligible for parole in 2033. This court affirmed Holt’s conviction in 1996 and in 2017 affirmed the denial of his petition for a writ of habeas corpus.

Holt then filed the petition for release to ES that underlies this appeal. He sought release to ES pursuant to WIS. STAT. § 302.114(1), (2) and, pursuant to WIS. STAT. § 304.02(1), for “special action parole release” due to prison overcrowding in violation of WIS. STAT. § 301.055. He mainly argued that the statutes in existence at his 1994 sentencing allowed him an earlier parole eligibility date such that WIS. STAT. § 973.014 was an unconstitutional ex post facto law. The trial court denied his petition. Holt appeals.

Holt’s arguments relate solely to statutory interpretation, which is a question of law that we review de novo. *State v. Stewart*, 2018 WI App 41, ¶18, 383 Wis. 2d 546, 916 N.W.2d 188.

We summarily reject Holt’s arguments. The current truth-in-sentencing statutes Holt relies on apply only to “a person [sentenced] to life imprisonment for a crime committed on or after December 31, 1999.” WIS. STAT. § 973.014(1g)(a). Holt committed his crime and was sentenced in 1994 and thus properly was sentenced under the indeterminate sentencing structure

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

of § 973.014(1)(b) (1995-96). The procedure to petition for release to ES under WIS. STAT. § 302.114 is for inmates given life imprisonment for crimes committed *after* December 31, 1999. As he was not sentenced under truth-in-sentencing, Holt is not eligible for ES.

We likewise reject Holt's contention that he should be eligible for release under WIS. ADMIN. CODE § DOC 302.22(2), which provides that the time an inmate may spend in initial confinement can be no more than thirteen years and four months, even if the court ordered otherwise. Administrative rules are promulgated by state agencies, not the legislature. Administrative rules may not alter, conflict with, or supersede a statute. WIS. STAT. §§ 227.10(2), 227.11(2)(a). If they do, they are "a mere nullity." *Mallo v. DOR*, 2002 WI 70, ¶15, 253 Wis. 2d 391, 645 N.W.2d 853 (citation omitted). Further, an inmate such as Holt who is subject to 1983 Wis. Act 528 and whom the court has made eligible for parole is eligible after serving thirteen years and four months *or at a later date ordered by the court*. Sec. DOC 302.22(2)(a)2. Holt's petition for release to ES was properly denied.²

Holt also contends WIS. STAT. § 973.014(1)(b) increases the minimum parole eligibility date from what it was when he was sentenced and thus is an ex post facto violation. Current § 973.014(1)(b), originally numbered § 973.014(2), was enacted in 1987. It expressly applies to crimes committed on or after July 1, 1988. *See* 1987 Wis. Act 412, §§ 5-7. It cannot possibly be an ex post facto violation for a crime committed five and one-half years later.

² Holt also complains that he should be allowed to petition for release to ES because neither the sentencing transcript nor the judgment of conviction specifically identify the statute that applies to ES. Besides citing no authority for that proposition, neither ES nor WIS. STAT. § 973.014(1g) existed in 1994. By specifically ordering a parole eligibility date, the court imposed sentence under § 973.014(1)(b), one of the two options available.

Holt also is not eligible for the special action release program under WIS. STAT. § 304.02. That statute allows the Department of Corrections to parole inmates who are not serving sentences for assaultive felonies. *See* § 304.02(1), (3)(b). First-degree intentional homicide clearly is an “assaultive” felony. *See* WIS. ADMIN. CODE § DOC 302.03(5).

Holt next contends the court’s determination that he should not be eligible for parole until 2033 is “shocking” and “unreasonably harsh.” Holt stabbed a man over seventy times. When the first knife was bent beyond utility, he got a second knife and continued his attack. The court did not erroneously exercise its sentencing discretion.

Finally, we decline Holt’s invitation to exercise our discretionary authority to reverse his conviction in the interest of justice under WIS. STAT. § 752.35. We are satisfied that the real controversy was fully tried and Holt has not persuaded us that it is probable that there was a miscarriage of justice.

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