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**DISTRICT II**

June 12, 2019

To:

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Waukesha County Courthouse  
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John J. Miller  
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You are hereby notified that the Court has entered the following opinion and order:

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2018AP963-CR

State of Wisconsin v. John J. Miller (L.C. #2011CF915)

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).**

John J. Miller, pro se, appeals from an order denying sentence adjustment. 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 (2017-18).<sup>1</sup> We affirm the denial of Miller’s request for sentence adjustment.

Miller received a nine-year sentence (four years’ initial confinement, five years’ extended supervision) in 2012 upon his plea to operating while intoxicated, seventh offense. We affirmed his conviction upon his direct appeal. *State v. Miller*, No. 2013AP2488-CRNM, unpublished op. and order (WI App Aug. 13, 2014). On April 23, 2018, Miller petitioned for sentence adjustment under WIS. STAT. § 973.195. The district attorney objected to Miller’s petition for sentence adjustment. The circuit court denied Miller’s petition on the grounds that sentence adjustment was not in the public interest and that the district attorney objected to sentence adjustment.<sup>2</sup>

Miller argues on appeal that the sentence adjustment statute, WIS. STAT. § 973.195(1r)(c), is unconstitutional as it violates the separation of powers doctrine and that the circuit court erroneously exercised its discretion by failing to properly set forth its reasons for denying sentence adjustment and for giving the district attorney veto power over his petition for sentence adjustment.

We summarily affirm as the issues raised by Miller have already been fully addressed in *State v. Stenklyft*, 2005 WI 71, 281 Wis. 2d 484, 697 N.W.2d 769, and *State v. Edmunds*, 2008

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

<sup>2</sup> We note that the circuit court’s order indicates that the petition was “[d]enied pursuant to WIS. STAT. § 973.195(1r)(d) because the District Attorney’s Office has objected.” As the State acknowledges, § 973.195(1r)(d) does not apply to Miller’s case as it references specific offenses not applicable to Miller and an objection by the victim. Both the State and this court assume that the circuit court’s order included a clerical error as the correct paragraph is § 973.195(1r)(c).

WI App 33, 308 Wis. 2d 374, 746 N.W.2d 590. In *Stenklyft*, our Wisconsin Supreme Court held that the district attorney does not have veto power over a sentence adjustment petition, and as such, WIS. STAT. § 973.195(1r)(c) does not violate the separation of powers doctrine. *Stenklyft*, 281 Wis. 2d 484, ¶¶82-83, 85 (Abrahamson, C.J., concurring/dissenting), ¶123 (Crooks, J., concurring/dissenting). We are bound by decisions of our supreme court. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

*Edmunds* held that a court which considers the facts, applies a proper legal standard and reaches a reasonable decision properly exercises its discretion. *Edmunds*, 308 Wis. 2d 374, ¶8. As indicated in the order, the court in this action considered Miller's crime, his character, the protection of the public, and Miller's conduct and treatment progress and concluded that an adjustment to Miller's sentence was not in the public interest. Specifically, the court took into account Miller's seven convictions for operating while intoxicated and that his latest infraction involved him driving at ninety-one miles an hour while intoxicated. The court reasonably concluded that the public needed protection from Miller.

Upon the foregoing reasons,

IT IS ORDERED that the order denying sentence adjustment is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*