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**DISTRICT II**

August 14, 2019

To:

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

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2018AP1688-CR

State of Wisconsin v. Robert T. Brown (L.C. #2011CF229)

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).**

Robert T. Brown appeals from an order denying his petition for positive adjustment time (PAT). 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 order of the circuit court.

On May 27, 2011, Brown was arrested for operating while intoxicated (OWI) as a fifth offense. A jury convicted him of the charge, and the circuit court imposed a six-year sentence consisting of three years of initial confinement and three years of extended supervision.

Brown was released to extended supervision on October 14, 2013.<sup>2</sup> His extended supervision was revoked on November 20, 2015, following another OWI. After revocation, Brown was ordered reconfined.

Roughly two years later, on November 16, 2017, Brown filed a petition for PAT.<sup>3</sup> The circuit court denied the petition as premature. Over the next several months, Brown unsuccessfully sought reconsideration of the court’s decision.

Eventually, on June 26, 2018, Brown filed another letter seeking early release. Again, the circuit court denied Brown relief—this time noting that Brown “is serving reconfinement time, which gives the court grave concerns about reoffending despite his progress while incarcerated.” This appeal follows.

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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> Brown’s completion of the Earned Release Program led to his early release.

<sup>3</sup> The petition is not in the record. However, the petition’s attachment (the Verification of Eligibility for Positive Adjustment Time form) was filed on November 16, 2017. This date is supported by other documents in the record and the circuit court docket entries, which were transmitted with the notice of appeal.

In 2009, the legislature created WIS. STAT. § 302.113(2)(b) (2009-10) to provide an opportunity for certain inmates to reduce their prison sentences by earning PAT. 2009 Wis. Act 28 §§ 2722, 2722L. The legislature repealed the PAT statute in 2011. 2011 Wis. Act. 38, §§38-39; *State ex rel. Singh v. Kemper*, 2016 WI 67, ¶¶12-14, 371 Wis. 2d 127, 883 N.W.2d 86.

Notwithstanding the statute's repeal, Brown was still eligible to earn PAT because he committed his crime between October 1, 2009, and August 3, 2011—the “window” during which Wisconsin prisoners remained eligible for PAT. *Id.*, ¶92. Under the applicable law, Brown could earn PAT at the rate of one day for every two days served in confinement and could petition for PAT 90 days before he was eligible for release, taking into consideration the earned time. *See* WIS. STAT. §§ 302.113(2)(b) and 304.06(1)(bk) (2009-10).

In this case, the parties agree that Brown was eligible for PAT. They also agree that he could petition for PAT 90 days before he was eligible for release, taking into consideration the earned time. The parties' briefing largely focuses on whether the petition was premature.

We need not address the timeliness of Brown's petition. That is because even if the petition was timely filed, the circuit court retained the discretion to deny it. *See State ex rel. Singh v. Kemper*, 2014 WI App 43, ¶23, 353 Wis. 2d 520, 846 N.W.2d 820, *aff'd in part and rev'd in part on other grounds*, 2016 WI 67, 371 Wis. 2d 127, 883 N.W.2d 86. We will sustain a court's exercise of discretion if the court reaches a conclusion that a reasonable judge could reach, even if this court or another judge might have reached a different conclusion. *State v. Odom*, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695.

Here, we are satisfied that the circuit court properly exercised its discretion in denying Brown's petition on the merits. The court determined that Brown posed an unacceptable risk of

reoffending despite his good behavior while in prison. This was due to the fact that Brown was serving reconfinement time for committing the same offense that led to his original sentence. Given Brown's criminal history and risk of reoffending, the court's decision to deny early release is one that a reasonable judge could reach. Accordingly, we affirm.

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.

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