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DISTRICT II

February 5, 2020

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

2018AP2035-CR State of Wisconsin v. Dewayne E. Anderson (L.C. #2016CF166)

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).

Dewayne E. Anderson appeals from a judgment of conviction and an order denying his postconviction motion. He contends that the circuit court erred in finding him ineligible to participate in two early-release programs—the challenge incarceration program (CIP) and the

substance abuse program (SAP).¹ 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).² We affirm.

Anderson was convicted following a jury trial of three counts of burglary of a building or dwelling as a party to a crime. The circuit court imposed a total of five years of initial confinement and four years of extended supervision on the first two counts. It then imposed an additional four years of initial confinement and four years of extended supervision on the third count—stayed for four years of probation.

As part of its sentencing decision, the circuit court found Anderson ineligible to participate in the CIP and SAP. The court did not believe the CIP was appropriate due to “the need to protect the public and safety” and “all the information” it knew about Anderson. Likewise, it did not believe the SAP was appropriate because “most of what [it] read says and Mr. Anderson tells [the court] that he doesn’t have an alcohol or drug problem.”

After sentencing, Anderson filed a postconviction motion asking the circuit court to find him eligible to participate in the CIP and SAP at a later date. The circuit court denied the motion, noting that it had properly exercised its discretion in finding Anderson ineligible for the programs. This appeal follows.

¹ The substance abuse program was formerly known as the earned release program. *See* 2011 Wis. Act 38, § 19.

² All references to the Wisconsin Statutes are to the 2017-18 version.

The sole issue on appeal is whether the circuit court properly exercised its discretion in finding Anderson ineligible to participate in the CIP and SAP. Anderson does not otherwise challenge the imposition of sentence.

The CIP and SAP are prison treatment programs that, upon successful completion, permit an inmate serving a bifurcated sentence to convert his or her remaining initial confinement time to extended supervision time. See WIS. STAT. §§ 302.045(3m)(b) & 302.05(3)(c)2. A circuit court exercises its discretion when determining a defendant's eligibility for these programs, and we will sustain the court's conclusions if they are supported by the record and the overall sentencing rationale. See *State v. Owens*, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; *State v. Steele*, 2001 WI App 160, ¶8, 246 Wis. 2d 744, 632 N.W.2d 112; WIS. STAT. § 973.01(3g)-(3m).

Here, we are satisfied that the circuit court properly exercised its discretion in finding Anderson ineligible to participate in the CIP and SAP. Again, the court did not believe the CIP was appropriate due to “the need to protect the public and safety” and “all the information” it knew about Anderson. Likewise, it did not believe the SAP was appropriate because “most of what [it] read says and Mr. Anderson tells [the court] that he doesn't have an alcohol or drug problem.” These statements, which are based on primary sentencing factors and the purpose behind such programs, more than adequately explain the court's decision. They are also supported by the record, as Anderson did not show that he had a substance abuse problem or that it was the reason for his crimes. Accordingly, we decline to disturb the court's determination.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are 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