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DISTRICT III

February 18, 2020

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

2018AP515-CR State of Wisconsin v. Anthony E. Spoerl (L. C. No. 2008CF75)

Before Stark, P.J., Hruz and Seidl, 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).

Anthony Spoerl, pro se, appeals an order denying his petition for sentence adjustment pursuant to WIS. STAT. § 973.195 (2017-18).[1] Spoerl argues the circuit court erroneously exercised its discretion and violated Spoerl's due process rights when denying his petition.

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

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. We reject Spoerl's arguments and summarily affirm the circuit court's order.

In 2008, the State charged Spoerl with a total of twenty-nine crimes, consisting of: eighteen counts of burglary to a building or dwelling; two counts of attempted burglary to a building or dwelling; and nine counts of criminal damage to property (with one count being felony criminal damage to property). The charges arose from allegations that Spoerl burglarized and sometimes ransacked several homes and businesses over the course of roughly three months. In exchange for his no-contest pleas to eight of the burglary charges, the remaining counts were dismissed and read in for sentencing.

With respect to four of the burglary counts, the circuit court[2] imposed six-year sentences, consisting of three years' initial confinement and three years' extended supervision, concurrent with each other but consecutive to Spoerl's sentence in another case. For the remaining burglary counts, the court withheld sentence and imposed seven years of probation to run concurrent with each other but consecutive to Spoerl's other sentences.

After serving a little over one year and nine months of his sentences, Spoerl petitioned the circuit court for sentence adjustment on all counts, alleging that his conduct, efforts at and progress in rehabilitation, education, treatment and other prison programs supported his request. In an attached letter, Spoerl apologized for his crimes, described life changes he had

[2] The Honorable Dee R. Dyer sentenced Spoerl. The Honorable Vincent R. Biskupic denied Spoerl's petition for sentence adjustment.

implemented to avoid "the wrong person/people," and outlined his plan for returning home. The court notified the district attorney of the petition, and the district attorney objected. After receiving the district attorney's objection, the court denied Spoerl's petition. This appeal follows.

WISCONSIN STAT. § 973.195 grants an inmate the opportunity to petition for sentence adjustment if certain criteria are met. When presented with such a petition, the circuit court has two options—either summarily deny the petition or hold the petition for further consideration. WIS. STAT. § 973.195(1r)(c). Where, as here, the court holds the petition, it "shall notify the district attorney of the inmate's petition." ***Id.*** The statute further provides: "If the district attorney objects to adjustment of the inmate's sentence within 45 days of receiving notification under this paragraph, the court shall deny the inmate's petition." ***Id.***

Although the statute directs the sentencing court to deny the petition on the prosecutor's timely objection, our supreme court has interpreted the use of the word "shall" under that subsection "as directory," not mandatory. ***State v. Stenklyft***, 2005 WI 71, ¶83, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring/dissenting but writing for a majority on the issue of the circuit court's discretion).[3] Accordingly, the statute gives the "circuit court discretion to accept or reject an objection from a district attorney on a petition for sentence adjustment." ***Id.*** When determining whether adjustment is appropriate, the circuit court can grant a petition for

[3] Justices Ann Walsh Bradley, N. Patrick Crooks, and Louis B. Butler joined Chief Justice Abrahamson's concurrence/dissent, thus forming a four-person majority for this proposition. ***State v. Stenklyft***, 2005 WI 71, ¶82, 281 Wis. 2d 484, 697 N.W.2d 769.

sentence adjustment only when it "determines that sentence adjustment is in the public's interest." WIS. STAT. § 973.195(1r)(f).

Here, the record supports the circuit court's decision to deny Spoerl's petition. In the court's form order, it indicated that it considered "relevant factors including the nature of the crime," Spoerl's "character," "the protection of the public, the positions of the State and of the victim[s]," and Spoerl's "institutional conduct, including [his] efforts at and progress in rehabilitation, or lack thereof, and [his] participation and progress or lack thereof, in education, treatment and correctional programs." Based on its consideration of these factors, the court concluded that sentence adjustment was inappropriate because it was "not in the public interest." By considering the relevant factors and applying the appropriate legal standard, the court properly exercised its discretion when denying the petition.

Moreover, the record, and particularly the sentencing court's remarks, support the determination that sentence adjustment was not in the public's interest. *See* ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 (holding we will not overturn a circuit court's discretionary decision absent an erroneous exercise of discretion and will generally look for reasons to sustain such determinations). The sentencing court described Spoerl's behavior as "a crime spree" of "monumental proportions." The court added: "[T]he kind of fear that was propounded by you to the community cannot go unpunished, the kind of crimes where you continually entered into people's homes, their sanctuary, and violated them to the point where they are emotionally upset and continue to be to this day," cannot "go unpunished," as that "would definitely send you the wrong message and the community as well." In granting 331 days of sentence credit, the court stated: "I have factored that into the minimum amount of time that this [c]ourt needs to protect the community from you," and to send you "a message." Given

the nature of Spoerl's crimes and the court's sentencing comments, the record supports the court's discretionary decision to deny Spoerl's petition.

Spoerl nevertheless asserts a number of procedural due process claims in the denial of his petition. First, he contends the circuit court erred by failing to send him a copy of the notice that gave the district attorney time to object. Spoerl argues that had he received that notice, he would have had the opportunity to respond to any objection or to provide additional relevant information. The statute, however, does not require the court to copy Spoerl with the notice sent to the district attorney's office. *See* WIS. STAT. § 973.195. Further, the statute does not contemplate protracted argument between the parties; in fact, it does not even provide for a petitioner's response after any objection the district attorney might make. Spoerl's petition should have included all pertinent material to be considered by the court and the district attorney. *See* ***id.*** (placing no restrictions on what an inmate is able to submit with his or her petition). Moreover, receiving a copy of the notice would not have enabled Spoerl to respond to the district attorney's position, as the district attorney had not yet taken a position.

Spoerl also contends that by failing to copy him with the notice sent to the district attorney, the circuit court engaged in ex parte communication with the district attorney. However, this is the process set forth by statute. *See* WIS. STAT. § 973.195(1r)(c). That the district attorney could be asked for input was not a secret—the statute specifically notified Spoerl that this interaction might occur. Further, only after receiving filings from both parties did the court deny the petition.

Spoerl argues, in the alternative, that the statute is "ambiguous" as it does not give a petitioner the right to respond to the district attorney's objection and allows ex parte

communication between the court and the district attorney. That Spoerl disagrees with the process set forth in the statute does not render it "ambiguous." To the extent Spoerl may be challenging the validity of the statute, he fails to develop a coherent argument susceptible to meaningful appellate review. This court need not address issues so lacking in organization and substance that for the court to decide the issues, it would first have to develop them. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Next, Spoerl argues he was not given an opportunity to respond to the district attorney's objection because he did not receive it until after the circuit court had already denied his petition. Even if Spoerl had received the objection before the court's decision, there would have been nothing to refute, as the district attorney did not give a reason for her objection, nor was she required to do so. By operation of the statute, once the district attorney objected, the circuit court could take the matter under submission.

Throughout his brief, Spoerl also suggests that it was the district attorney who denied his petition. As noted above, however, the statute gives the "circuit court discretion to accept or reject an objection from a district attorney on a petition for sentence adjustment." ***Stenklyft***, 281 Wis. 2d 484, ¶83. To the extent Spoerl additionally claims that his right to petition the government was violated because he did not receive a hearing, the right to petition and the right to a hearing are not one and the same. Spoerl was afforded the process provided by the statute, which does not provide for a hearing on the petition. Spoerl does not separately develop a due process argument.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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