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DISTRICT III

April 21, 2020

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

2018AP2179-CR State of Wisconsin v. Michael J. VandenHeuvel
(L. C. No. 2011CF192)

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).

Michael VandenHeuvel, pro se, appeals from an order that denied his petition for 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).[1] We affirm.

VandenHeuvel pled no contest to a Class H felony count of identity theft and was sentenced to five years' initial confinement and three years' extended supervision. After serving the requisite seventy-five percent of his initial confinement term, VandenHeuvel petitioned for sentence adjustment pursuant to WIS. STAT. § 973.195. The State objected, noting that VandenHeuvel had a lengthy criminal history and multiple rule violations in prison, and that the victim was strongly opposed to early release. The circuit court denied the petition by checking the applicable boxes on circuit court form CR-260 and signing the form.

VandenHeuvel then requested a hearing on his petition, essentially seeking reconsideration. The circuit court denied VandenHeuvel's request for a hearing and reiterated that it found no grounds to adjust his sentence. In doing so, the court cited the reasons set forth in the State's objection, as well as factors discussed in the presentence investigation report and at the sentencing hearing.

On appeal, VandenHeuvel contends the circuit court failed to properly exercise its discretion in denying his petition because merely checking boxes on a form does not provide any meaningful reason or rationale for the court's decision. VandenHeuvel further argues that the denial of his adjustment petition without a hearing suggests that the court may have inappropriately deferred to the State's objection under the mistaken belief that the statutes give the district attorney veto power. *See* ***State v. Stenklyft***, 2005 WI 71, ¶82, 281 Wis. 2d 484, 697

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

N.W.2d 769 (Abrahamson, C.J., concurring in part and dissenting in part) (treating a prosecutor's objection to a sentence adjustment petition as binding violates separation of powers). Neither of VandenHeuvel's arguments are persuasive.

First, the circuit court did not erroneously exercise its discretion by using form CR-260. The court was required by WIS. STAT. § 971.025(1) to use any applicable form adopted by the judicial council. Form CR-260, entitled "Order Concerning Sentence Adjustment §973.195, Wis. Stats," was plainly an applicable form. By checking the appropriate boxes and signing the form, the court indicated it had concluded that sentence adjustment would not be in the public interest

> after considering any relevant factors including the nature of the crime, the character of the inmate, the protection of the public, the positions of the State and of the victim and the inmate's institutional conduct, including the inmate's efforts at and progress in rehabilitation, or lack thereof, and the inmate's participation and progress, or lack thereof, in education, treatment and correctional programs.

As recognized by the judicial council in adopting the form, a conclusion that sentence adjustment would not be in the public interest is a proper legal basis for denying a sentence adjustment petition. Reaching such a conclusion after consideration of the factors cited in the form thus demonstrates a reasonable exercise of discretion.

Second, the record on appeal does not support VandenHeuvel's assertion that the circuit court gave the prosecutor veto power over his sentence adjustment petition. As we have just explained, the court's form order indicates that the court independently considered the relevant factors and determined that sentence adjustment would not be in the public interest. At no place in either the form order or the subsequent order denying a hearing did the court suggest that it felt compelled to deny VandenHeuvel's petition based solely upon the prosecutor's objection.

Rather, the record shows the court properly considered the State's position as one factor in its decision.

Therefore,

IT IS ORDERED that the order denying sentence adjustment 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