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DISTRICT II

May 20, 2020

To:

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

2018AP1711-CR

State of Wisconsin v. Delorean L. Bryson (L.C. #2012CF596)

Before Neubauer, C.J., Gundrum and Davis, 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).

Delorean L. Bryson appeals pro se from an order denying his motion to refund the DNA surcharge imposed in his case. 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.

In 2013, Bryson was convicted of one count of identity theft for financial gain as a party to a crime. The circuit court imposed three years of probation with an imposed-but-stayed bifurcated sentence. It also imposed a \$250 DNA surcharge.

Five years later, in 2018, Bryson filed a motion to refund the DNA surcharge. He noted that the DNA surcharge was not mandatory in his case. Accordingly, he argued that imposing it was an error. The circuit court denied the motion without a hearing. This appeal follows.

On appeal, Bryson renews his request to refund the DNA surcharge. Again, he notes that the DNA surcharge was not mandatory in his case. He also raises new issues,² which we will not consider. *See State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) (“[I]ssues not presented to the circuit court will not be considered for the first time on appeal.”).

The problem with Bryson’s request is that it is untimely. The time limits to challenge the DNA surcharge, either by motion to modify sentence or by motion for postconviction relief in a direct appeal, have long expired. *See* WIS. STAT. §§ 973.19, 974.02 and WIS. STAT. RULE 809.30. Furthermore, relief under WIS. STAT. § 974.06 is not available because challenges to a court’s sentencing discretion are not jurisdictional or constitutional claims. *See State v. Nickel*,

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

² Bryson now claims that the circuit court did not properly exercise its discretion by providing reasons on the record for imposing the DNA surcharge. He also claims that imposition of the surcharge was an ex post facto violation.

2010 WI App 161, ¶7, 330 Wis. 2d 750, 794 N.W.2d 765. Thus, as in *Nickel*, Bryson’s motion “comes too late” and cannot be considered. *Id.*, ¶4.

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.

Sheila T. Reiff
Clerk of Court of Appeals