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**DISTRICT II**

July 15, 2020

To:

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

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2019AP293

State of Wisconsin v. Mark A. Stephens (L.C. #2002CF886)

Before Reilly, P.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).**

Mark Stephens appeals *pro se* from a circuit court order declining to take action on his sentence modification motion on the grounds that the issues were previously raised and decided by the circuit court. 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).

We affirm the circuit court order.

In 2005, Stephens pled guilty to armed burglary contrary to WIS. STAT. § 943.10(2)(a) (2001-02)<sup>1</sup> arising from criminal acts he committed on August 22, 2002. In January 2006, the circuit court sentenced Stephens to forty years (twenty years of initial confinement and twenty years of extended supervision). We affirmed the conviction. *State v. Stephens*, No. 2006AP2809-CR, unpublished slip op. (WI App Apr. 23, 2008).

In October 2018, Stephens moved the circuit court to modify his sentence because the felony classification for armed burglary was reduced between the time he committed the crime and his sentencing. While it is true that the felony classification for armed burglary was reduced from class B to class E, 2001 Wis. Act 109, § 722, that change did not apply to or benefit Stephens. The reclassification was effective February 1, 2003. *State v. Thums*, 2006 WI App 173, ¶6 n.1, 295 Wis. 2d 664, 721 N.W.2d 729; *see also* 2001 Wis. Act 109, §§ 9459(1), 9359(3), (4), (5). Stephens committed the armed burglary in August 2002, before the effective date of the reclassification and the concomitant reduced penalties. The legislature did not mandate retroactive application of the reduced penalties. *State v. Tucker*, 2005 WI 46, ¶¶2, 17, 25, 279 Wis. 2d 697, 694 N.W.2d 926; WIS. STAT. § 990.04 (criminal charges and subsequent sentencing occur under the statutes in effect at time of the offense unless there is clear legislative intent to the contrary). Although the circuit court declined to address Stephens's motion, we reach the merits and affirm. *See State v. Rogrud*, 156 Wis. 2d 783, 789, 457 N.W.2d 573 (Ct. App. 1990) (we may affirm a correct decision of circuit court even though that court relied on other grounds).

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

We reject Stephens’s reliance on the federal sentencing guidelines. Wisconsin courts are not bound by the federal sentencing guidelines. *State v. Kaczynski*, 2002 WI App 276, ¶11 n.1, 258 Wis. 2d 653, 654 N.W.2d 300. Similarly, we reject Stephens’s reliance on *Dorsey v. United States*, 567 U.S. 260 (2012), because *Dorsey* addresses federal sentencing guidelines.<sup>2</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2017-18).

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*

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<sup>2</sup> While we have considered all of the arguments in the briefs, we only discuss those arguments that are necessary to our decision. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (we are not bound by the manner in which the parties have structured or framed the issues). Arguments not mentioned are deemed rejected. *See id.*