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DISTRICT II

September 23, 2020

To:

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

2019AP1223-CR

State of Wisconsin v. Brian M. Cahill (L.C. #2007CF7)

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).

Brian M. Cahill appeals pro se from an order denying his motion for sentence modification. 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 conclude that the circuit court properly denied Cahill’s motion. Accordingly, we affirm its order.

In 2007, Cahill was convicted following a guilty plea to first-degree sexual assault of a child. The circuit court sentenced him to state prison for fifteen years.

Eleven years later, in 2018, Cahill filed a motion for sentence modification. In it, he noted that the maximum penalty under the statute applicable to his offense was twenty years and that he had been wrongly informed that the maximum penalty was forty years prior to his plea and sentencing. Due to this error, which the State conceded, Cahill argued that he was entitled to have his sentence cut in half, from fifteen years to seven and one-half years. Following a hearing on the matter, the circuit court denied his motion. This appeal follows.

On appeal, Cahill contends that the circuit court erred in denying his motion for sentence modification. He renews his request for a “proportional sentence modification” based upon the correct maximum penalty, thereby reducing his sentence from fifteen years to seven and one-half years.

We are not persuaded that Cahill is entitled to the relief he seeks. As noted by the circuit court, plea withdrawal was a potential remedy that Cahill could have pursued due to the difference between the communicated and allowable maximum sentence. *See State v. Cross*, 2010 WI 70, ¶¶38-39, 326 Wis. 2d 492, 786 N.W.2d 64. Another potential remedy was resentencing due to the use of inaccurate information at sentencing. *See State v. Tiepelman*,

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

2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. Ultimately, Cahill rejected both of those options, choosing instead to ask for a specific sentence that he formulated himself. There is no basis in the law for his request. Thus, we are satisfied that the court properly denied his motion.²

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

² To the extent we have not addressed any other argument raised by Cahill on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

