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DISTRICT IV

December 30, 2020

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

2019AP1068-CR State of Wisconsin v. Terry L. Schroedl (L.C. # 2000CF125)

Before Fitzpatrick, P.J., Kloppenburg, and Graham, 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).

Terry Schroedl appeals an order denying his motion for sentence modification and an order denying his motion to reconsider. 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 2000, Schroedl was convicted of one felony count, and the court imposed an indeterminate sentence of not more than forty years in prison. After the court imposed the forty-year sentence in this case, the court imposed a second and consecutive forty-year sentence in another case. In 2019, Schroedl moved for modification of his sentence based on a purported new factor. The circuit court denied the motion.

To qualify as a new factor for purposes of resentencing, the fact or set of facts must be highly relevant to the imposition of sentence and not have been known to the sentencing judge at the time of sentencing. *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828. Whether a new factor exists is a question of law that we review independently. *Id.*, ¶33.

On appeal, Schroedl argues that his sentence should be modified because the sentencing court misunderstood the consequences of the sentence it imposed. He also argues that the court did not understand how the Department of Corrections would administer the sentence.

Schroedl's argument relies on a statement the court made after imposing those sentences:

The effect of these sentences, Mr. Schroedl, is, as I understand it, that you'll have to serve at least the minimum on the first sentence before you commence the second, so you're going to face a substantial period of prison time. But because of the parole system in Wisconsin, this Court doesn't determine when you're eligible for parole.

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

Schroedl argues that the sentencing court intended that he would serve the minimum imprisonment of ten years on the first sentence, and then be eligible for parole. Schroedl further argues that, because the Department is not administering his sentence in that manner, that is a new factor on which he should be resentenced. His argument is based on two ideas that are not correct.

Schroedl asserts that when the sentencing court said he would serve “at least the minimum,” that meant Schroedl “would” serve the minimum. That is not a correct understanding of the phrase “at least.” That phrase means that the defendant would serve no less than the minimum, but it leaves open the possibility that the defendant would serve more than the minimum.

Schroedl also asserts that the Department has erred by calculating both of his sentences as a continuous sentence, rather than allowing him to be eligible for parole after serving the minimum amount of prison time under the first sentence alone. That assertion is also incorrect. *See* WIS. STAT. § 302.11(3) (“All consecutive sentences imposed for crimes committed before December 31, 1999, shall be computed as one continuous sentence.”).

Contrary to Schroedl’s argument, we see no indication in the sentencing transcript that the sentencing court misunderstood either of these concepts discussed above, or that the court expected Schroedl’s sentence to be administered in a way different from how it is being administered now. Therefore, Schroedl has not established that any new factor exists for resentencing. The Department’s administration of Schroedl’s sentence in the manner he describes is not a factor relevant to sentencing that was overlooked by the sentencing court.

IT IS ORDERED that the orders appealed from are summarily affirmed under Wis. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition will not be published.

Sheila T. Reiff
Clerk of Court of Appeals