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**DISTRICT II**

December 30, 2020

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

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2019AP1536-CR	State of Wisconsin v. Christian M. Cordova (L.C. #2012CF454)
2019AP1537-CR	State of Wisconsin v. Christian M. Cordova (L.C. #2012CF460)
2019AP1538-CR	State of Wisconsin v. Christian M. Cordova (L.C. #2012CF474)

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).**

In these consolidated cases, Christian M. Cordova appeals from judgments of conviction and an order denying his motions for postconviction relief. He seeks sentence modification and a restitution hearing. Based upon our review of the briefs and records, we conclude at

conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup> We affirm.

Cordova was convicted following guilty pleas to two counts of felony bail jumping and one count of resisting an officer resulting in a soft tissue injury, all as a repeater. The charges stemmed from his unruly, violent, and resistive conduct towards his mother, girlfriend, and law enforcement in three separate incidents. Several additional charges were dismissed and read-in.<sup>2</sup>

For his actions, the circuit court imposed an aggregate sentence of fifteen years of initial confinement and seven years of extended supervision. It declined to find Cordova eligible for the early-release Challenge Incarceration Program (CIP) and Substance Abuse Program (SAP). It ordered Cordova to pay \$56,094.95 in restitution, which related to the officer's injury.

Cordova did not initially challenge the ordered restitution.<sup>3</sup> However, when the State submitted additional restitution claims based upon the same injury, Cordova moved for a restitution hearing. Additionally, he moved for sentence modification, seeking a shorter sentence and a finding of eligibility for CIP and SAP. After a hearing on the matter, the circuit court denied the motions. These appeals follow.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

<sup>2</sup> The dismissed and read-in charges in the three main cases were resisting, felony bail jumping, escape, criminal damage to property, and two counts of disorderly conduct. In addition, as part of the plea agreement, the State agreed to dismiss and read-in charges of disorderly conduct and battery by a prisoner in two other cases.

<sup>3</sup> Cordova attributes this failure to “defective communications with his defense counsel.”

On appeal, Cordova asserts that the circuit court erred in denying his motions for postconviction relief. He first contends that he is entitled to sentence modification based upon the court's erroneous exercise of discretion at sentencing. Principally, he faults the court for making erroneous findings relating to his substance abuse issues/needs, which he believes mitigated his conduct and can be addressed through access to CIP and SAP.

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether there was an erroneous exercise of discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. We afford a strong presumption of reasonability to the circuit court's sentencing determination because that court is best suited to consider the relevant factors and demeanor of the defendant. *State v. Ziegler*, 2006 WI App 49, ¶22, 289 Wis. 2d 594, 712 N.W.2d 76.

“[T]o properly exercise its discretion, a circuit court must provide a rational and explainable basis for the sentence.” *State v. Stenzel*, 2004 WI App 181, ¶8, 276 Wis. 2d 224, 688 N.W.2d 20. “The primary sentencing factors which a court must consider are the gravity of the offense, the character of the defendant, and the need to protect the public.” *Ziegler*, 289 Wis. 2d 594, ¶23.

Here, the record reveals that the circuit court's sentencing decision had a rational and explainable basis. The court examined the primary sentencing factors and explained why, in light of those factors, a maximum prison sentence was warranted. It is true that the court did not

cite Cordova's substance abuse issues/needs in its discussion of mitigating facts<sup>4</sup> and, indeed, misstated Cordova's past participation in alcohol and other drug abuse (AODA) programming.<sup>5</sup> However, it is the court that decides whether a fact is mitigating and warrants discussion at sentencing. See *Stenzel*, 276 Wis. 2d 224, ¶16. Moreover, the court's understanding of Cordova's substance abuse issues/needs was not the main reason for denying him eligibility for CIP and SAP. Rather, the decision to deny eligibility hinged on the court's determination that Cordova had "little concern for other human beings," as evidenced by his offenses and lengthy record. Thus, the court concluded that participation in such early-release programs was "not warranted." On this record, we perceive no erroneous exercise of discretion.

Cordova next contends that he is entitled to a restitution hearing. Since filing these appeals, the circuit court has granted Cordova's request for a restitution hearing. It has also granted his request for subpoenas of medical records relating to the officer's injury. Given these developments, we see no reason why Cordova cannot bring all of his restitution challenges (i.e., challenges to the initial award, the subsequent amounts claimed, his ability to pay, etc.) to the circuit court at the upcoming restitution hearing. Indeed, judicial economy favors such a result. Accordingly, we decline to address the issue of restitution at this time. If Cordova is dissatisfied

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<sup>4</sup> The circuit court questioned whether Cordova still had substance abuse issues/needs. It noted that, according to the presentence investigation report, Cordova "did not believe he has an issue with drugs and self[-]reports only weekend consumption of alcohol."

<sup>5</sup> The circuit court said that Cordova had not participated in AODA treatment at the Ethan Allen School. The presentence investigation report indicates otherwise.

with the outcome of the restitution hearing, he can return to this court with an appeal of the final decision.<sup>6</sup>

Upon the foregoing reasons,

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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>6</sup> To the extent we have not addressed an argument raised by Cordova 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).

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