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DISTRICT I

January 20, 2021

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

2019AP1125-CR State of Wisconsin v. Tyrone Davis Smith (L.C. # 2006CF6287)

Before Dugan, Blanchard and Donald, 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).

Tyrone Davis Smith, *pro se*, appeals an order amending his judgment of conviction. Smith argues that the circuit court should have given him a chance to be heard before correcting an error in the judgment. He also argues that the charging documents contained the same error. After

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 2007, Smith was convicted after a jury trial of one count of first-degree sexual assault of a child. He was sentenced to ten years of initial confinement and five years of extended supervision. We affirmed Smith's conviction on direct appeal. Over the next decade, Smith brought several postconviction motions seeking relief on various grounds. The circuit court denied the motions, and we affirmed on appeal. In 2019, the Department of Corrections asked the circuit court to review Smith's judgment of conviction because it incorrectly listed WIS. STAT. § 948.02(1), which at the time Smith was convicted required a mandatory minimum term of initial confinement of twenty-five years. The statute that should have been listed on the judgment of conviction was § 948.02(1)(e). On February 5, 2019, the circuit court ordered that the judgment of conviction be amended to reflect the correct statute and entered an amended judgment.

Smith argues that the circuit court should have given him a chance to be heard before correcting the error. Smith's argument is unavailing. The correction was minor; it did not alter the crime Smith was convicted of committing or increase his punishment. A defendant does not have the right to be present or given notice before a clerical error in a written judgment of conviction is corrected. *See State v. Prihoda*, 2000 WI 123, ¶31, 239 Wis. 2d 244, 618 N.W.2d 857. Smith also argues that he is entitled to relief because the complaint and information also contained the incorrect statutory cite. We addressed this issue in 2009 in our decision on direct appeal. We explained that the incorrect statutory cite was a harmless technical error that did not prejudice Smith. *State v. Smith*, No. 2008AP814-CR, unpublished slip op. at ¶2 n.1 (WI App

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

March 10, 2009). That ruling stands. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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