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DISTRICT IV

May 13, 2021

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

2019AP2005-CR State of Wisconsin v. Michael M. Reveles (L.C. # 2005CF839)

Before Kloppenburg, Graham, and Nashold, 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).

Michael Reveles, proceeding pro se, appeals the circuit court's orders denying his petitions for sentence adjustment. 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 (2019-20).[1] We summarily affirm.

Michael M. Reveles, a certified nursing assistant, was convicted in 2006 of six counts, arising from incidents with four different patients, of second-degree sexual assault of a patient by an employee of an inpatient health care facility. In September 2019, Reveles filed two petitions for sentence adjustment under WIS. STAT. § 973.195, arguing that his sentence should be adjusted based on his good conduct and efforts at rehabilitation. The circuit court denied Reveles's petitions and a subsequent motion for reconsideration on the basis that a sentence adjustment was not in the public interest. The court explained that it reached this determination based on the "gravity and nature" of Reveles's crimes, the district attorney's objection to sentence adjustment citing the "predatory" nature of the crimes against "multiple elderly patients in the hospital at which he was employed," and Reveles's continued justification of the crimes even as he claimed remorse. *See* ***State v. Stenklyft***, 2005 WI 71, ¶126, 281 Wis. 2d 484, 697 N.W.2d 769 (Crooks, J., concurring in part; dissenting in part) (when reaching a decision on sentencing readjustment, a circuit court must weigh appropriate factors such as "the nature of the crime, character of the defendant, protection of the public, positions of the State and of the victim, and other relevant factors"). Reveles appeals.

Whether to grant or deny a petition for sentence adjustment under WIS. STAT. § 973.195 is a discretionary decision of the circuit court. ***Stenklyft***, 281 Wis. 2d 484, ¶81 (Abrahamson, C.J., concurring in part; dissenting in part). We review the circuit court's decision for an

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

erroneous exercise of discretion; the court erroneously exercises its discretion when it applies the wrong legal standard or makes a decision not reasonably supported by the facts of the record. ***State v. Avery***, 2013 WI 13, ¶¶22-23, 345 Wis. 2d 407, 826 N.W.2d 60. We search the record for facts that support the circuit court's decision. ***Peplinski v. Fobe's Roofing, Inc.***, 193 Wis. 2d 6, 20, 531 N.W.2d 597 (1995) (we will uphold the circuit court's exercise of discretion if we can find facts of record that would support the circuit court's decision).

Reveles argues that the circuit court erroneously exercised its discretion. Specifically, he argues that the court characterized the statement submitted by Reveles in support of his petition for sentence adjustment as "bizarre" and "Forrest Gump-like" and credited the State's characterization of Reveles's crimes as "predatory" without holding an evidentiary hearing to determine whether the court's "concerns" and the State's "characterizations" were supported by evidence, thereby allowing the district attorney to exercise a "veto" over the circuit court's decision in violation of Wisconsin's separation of powers doctrine. This argument fails because it is not supported by the record or the law, as we now explain.

Second degree sexual assault is a grave crime, as reflected by its status as a Class C felony. WIS. STAT.§ 940.225(2). Here, the nature of the assaults, directed at vulnerable persons who went to a hospital to be treated for injuries and illnesses, makes them especially serious. Reveles abused his position of trust as a certified nursing assistant to assault multiple patients who suffered emotional and physical trauma, which is indeed "predatory" behavior. Reveles's own statement in support of his petitions shows that he continues to fail to appreciate the gravity of, or to accept responsibility for, his crimes, for example by referring to the crimes as "accidental" and as merely "resembling" sexual assault.

The circuit court's reliance on the State's objection to Reveles's petition, among other factors, is consistent with ***Stenklyft***'s directive to consider the position of the State and other relevant factors. ***Stenklyft***, 281 Wis. 2d 484, ¶126 (Crooks, J., concurring in part; dissenting in part). A circuit court "has discretion to accept or reject the objection of a district attorney on a sentence adjustment petition," ***id.***, ¶123, (Crooks, J., concurring in part; dissenting in part), and the court's decision here to deny Reveles's petition based in part on the district attorney's objection does not amount to a "veto" over the circuit court's exercise of discretion that would violate the separation of powers doctrine. *See* ***id.*** (while a district attorney veto would interfere with a circuit court's inherent power and run afoul of the separation of powers doctrine, the court's discretionary consideration of the district attorney's objection does not constitute such a veto).

To the extent that Reveles may be arguing that the circuit court did not sufficiently credit his positive conduct in prison and other examples of his good character, such an argument fails because it is not for this court to reweigh the factors. *See* ***Stenklyft***, 281 Wis. 2d 484, ¶¶81, 83 (Abrahamson, C.J., concurring in part; dissenting in part) (remanding to circuit court for weighing of proper factors on petition for sentence adjustment). *See also* ***State v. Longmire***, 2004 WI App 90, ¶39, 272 Wis. 2d 759, 681 N.W.2d 534 (circuit court's sentencing determination "will not be reweighed or rebalanced by this court" because such a determination "appears to be particularly within the wide discretion of the sentencing judge" (quoted source omitted)).

Although WIS. STAT. § 973.195(1r)(b)1. provides that an inmate's positive conduct in prison is one factor that a court is to consider in deciding a petition for sentence adjustment, the circuit court must still exercise its discretion in weighing all appropriate factors and determining

whether sentence adjustment is in the public interest. *See* ***Stenklyft***, 281 Wis. 2d 484, ¶126 (Crooks, J., concurring in part; dissenting in part) (requiring that the court weigh appropriate factors in addition to those listed in § 973.195(1r)(b)1.)); § 973.195(1r)(b)5. (listing as a factor whether sentence adjustment is in the interests of justice) and § 973.195(1r)(f) (authorizing the court to adjust an inmate's sentence if the court "determines that sentence adjustment is in the public interest"). As explained, the circuit court properly exercised its discretion in determining that, despite Reveles's good conduct, sentence adjustment was not in the public interest due to the nature and gravity of Reveles's crimes and his continued failure to take responsibility for his conduct.

Reveles's assertion that he was entitled to an evidentiary hearing on whether his behavior or statement were "predatory," "Forrest Gump-like," or "bizarre" is meritless because WIS. STAT. § 973.195 does not create a right to a hearing. *See* § 973.195. *See also* ***State v. West***, 2011 WI 83, ¶84, 336 Wis. 2d 578, 800 N.W.2d 929 (validly convicted individual has no "constitutional or inherent right to be conditionally released before the expiration of a valid sentence." (quoted source omitted)).

In sum, Reveles fails to show that the circuit court applied the wrong legal standard or made a decision not reasonably supported by the facts of the record. *See* ***Avery***, 345 Wis. 2d 407, ¶¶22-23.

Separately, Reveles argues that he is entitled to an evidentiary hearing regarding one victim's confidential electroencephalogram results because the results would support his claim of actual innocence. *See* ***State v. Shiffra***, 175 Wis. 2d 600, 605, 499 N.W.2d 719 (Ct. App. 1993) (defendant has due process interest in victim's confidential medical records where sought after

evidence is material to defense), *abrogated by* ***State v. Green***, 2002 WI 68, ¶¶32-34, 253 Wis. 2d 356, 646 N.W.2d 298 (replacing "relevant to defense" standard with requirement that defendant show "reasonable likelihood" that the confidential records will be necessary to a determination of guilt or innocence). Because Reveles raises this issue for the first time on appeal, we do not address it further. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) (as a general rule, appellate courts do not address issues raised for the first time on appeal). To the extent that Reveles also argues that trial counsel was ineffective for failing to seek such a hearing, such an argument is not properly raised on appeal because Reveles did not first raise the issue in a postconviction motion in the circuit court. *See* ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996) ("Claims of ineffective trial counsel … cannot be reviewed on appeal absent a postconviction motion in the trial court.").

Therefore,

IT IS ORDERED that the orders appealed 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