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DISTRICT II

October 20, 2021

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Calumet County
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1558-CR

State of Wisconsin v. Patrick D. Jefferson (L.C. #2017CF204)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Patrick D. Jefferson appeals a judgment of conviction for armed robbery as party to a crime and an order denying his postconviction motion. He argues the circuit court erroneously exercised its sentencing discretion when it found him ineligible for the Challenge Incarceration Program and Substance Abuse Program. 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.

Jefferson was tried by a jury and convicted of armed robbery as party to a crime. The circuit court sentenced Jefferson to a bifurcated prison term consisting of thirteen years' initial confinement and fifteen years' extended supervision. At sentencing, defense counsel noted that the presentence investigation report (PSI) indicated Jefferson was ineligible for the Challenge Incarceration Program and Substance Abuse Program. Counsel nonetheless requested that the court find Jefferson eligible and "let the Department of Corrections sort that out, and if he's eligible, great. If he's not, they'll make that determination." The court found Jefferson ineligible for both programs. Jefferson filed a postconviction motion asserting that he was sentenced based on inaccurate information in the PSI regarding his program eligibility.² The court denied the motion.

Jefferson argues the circuit court erroneously exercised its sentencing discretion by deeming him ineligible for the Challenge Incarceration Program, *see* WIS. STAT. § 302.045, and the Substance Abuse Program, *see* WIS. STAT. § 302.05.³ Both programs require a circuit court to determine program eligibility as part of the exercise of its sentencing discretion. *See*

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

² Jefferson also sought sentence modification or, in the alternative, program eligibility based on ineffective assistance of counsel.

³ Jefferson uses the phrase "abuse of discretion." Our supreme court abandoned that terminology in 1992 in favor of the phrase "erroneous exercise of discretion." *See City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

§§ 302.045(2)(cm), 302.05(3)(a)2.; *see also* WIS. STAT. § 973.01(3g), (3m).⁴ The State’s brief contains an accurate description of the programs, both of which are designed to treat inmates with substance abuse issues. Upon completion of the programs, the inmate is entitled to have his or her remaining confinement time converted to extended supervision. *See* §§ 302.045(3m), 302.05(3)(c).

Jefferson correctly notes that program eligibility is assessed using the same sentencing considerations that govern the ultimate sentencing determination. *See State v. Steele*, 2001 WI App 160, ¶¶9-10, 246 Wis. 2d744, 632 N.W.2d 112. The circuit court reasoned that although Jefferson had “some limited history of drug and alcohol use,” there was no indication those substances had any bearing on the crime, “contrary to what the Court normally sees with these serious felony offenses.” The court stated it was particularly unlikely that Jefferson was under the influence of alcohol or THC at the time that he led police on a high-speed chase following the robbery. The court concluded its remarks about program eligibility by stating, “[t]hat is a limited resource that should actually be used for someone that has those substance abuse issues, and they’re just not present here.”

Jefferson argues the circuit court failed to “consider Jefferson’s unique circumstances but rather relied upon an improper factor, the appropriate use of resources by the Department of Corrections, and additionally, relied upon findings of fact contrary to the record.” Contrary to Jefferson’s argument, we do not perceive the court to have been improperly opining upon how the Department of Corrections prioritizes program candidates and allocates its resources. Rather,

⁴ It is generally undisputed that Jefferson otherwise satisfied the statutory eligibility criteria.

the court's more basic point was that the programs were not necessary to meet Jefferson's rehabilitative needs.

In that regard, Jefferson merely assumes the record establishes that he did, in fact, have a substance abuse problem. Jefferson relies on his own statements to the PSI author, asserting that his admitted use of THC three to four days per week (totaling approximately one-half of an ounce) and his consumption of a few alcoholic drinks on weekends show a "possible substance abuse problem." In Jefferson's view, upon being presented at sentencing with admissions of "problematic drug use," a circuit court should presume that counseling will enhance rehabilitative efforts.

The record does not support Jefferson's assertions. The PSI author determined Jefferson was "unlikely to have a serious substance abuse problem" based on his substance abuse score. Though Jefferson admitted using drugs and alcohol on a regular basis, he told the PSI author he regarded their use as a "social activity," mostly consuming them while he was at friends' homes or with others. Jefferson emphasizes that he also told the PSI author he had used by himself and to cope with difficult times. However, by Jefferson's own account, he was "not a heavy user and his use has not caused him to 'do bad things.'" Jefferson stated he had never committed a crime while under the influence of alcohol or drugs, including the armed robbery, and he "[did] not feel his past or current legal problems are due to his use of alcohol or drugs." Furthermore, Jefferson did not believe his alcohol or drug use had any effect on him, his family, or his relationships, and he had never experienced withdrawals, blackouts, overdoses, or any serious side effects from his consumption. Jefferson reported abstaining from drugs and alcohol for periods of up to two months.

To the extent Jefferson argues the circuit court was required to accept his representations to the PSI author regarding his history of drug and alcohol use and to give presumptive, or even dispositive, weight to those representations, we note he has provided no authority for such an assertion. Rather, the court could reasonably view Jefferson's claimed substance abuse as self-serving, since completion of the Challenge Incarceration Program or Substance Abuse Program could reduce his confinement time. Jefferson's bald assertions about the quantity of substances he consumed, as well as his belief that he might benefit from treatment, do not overcome the court's finding that he does not have a serious substance abuse problem so as to warrant special programming.

Therefore,

IT IS ORDERED that the judgment 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.

Sheila T. Reiff
Clerk of Court of Appeals