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DISTRICT IV

November 24, 2021

To:

Hon. Richard A. Radcliffe
Circuit Court Judge
Electronic Notice

Shirley Chapiewsky
Clerk of Circuit Court
Monroe County Courthouse
Electronic Notice

Kevin D. Croninger
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Jorden Lee Hibbler 455100
Oakhill Correctional Inst.
P.O. Box 938
Oregon, WI 53575-0938

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

2020AP1957-CR State of Wisconsin v. Jorden Lee Hibbler (L.C. # 2013CF396)

Before Blanchard, P.J., Kloppenburg, 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).

Jorden Hibbler, pro se, appeals the circuit court's order denying his petition for sentence adjustment. Hibbler contends that the circuit court erroneously exercised its discretion in denying his petition. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).[1] We affirm.

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

In 2014, Hibbler received an eight-year bifurcated sentence on a burglary charge. He was released on supervision in 2016, but later reincarcerated after violating his rules of supervision. Hibbler filed a petition for sentence adjustment pursuant to WIS. STAT. § 973.195. He alleged that sentence adjustment was justified based on one or more of the following grounds: his conduct; his efforts at and progress in rehabilitation; and his participation and progress in education, treatment, or other correctional programs. As noted above, the circuit court denied Hibbler's petition.

The circuit court's decision to grant or deny a petition for sentence adjustment is discretionary. *See* ***State v. Stenklyft***, 2005 WI 71, ¶¶81-83, 281 Wis. 2d 484, 697 N.W.2d 769 (Abrahamson, C.J., concurring in part and dissenting in part, and writing for the majority on the issue of the circuit court's discretion). To show a proper exercise of discretion, "the record of the proceedings must clearly demonstrate that the circuit court exercised its discretion and weighed the appropriate factors." ***Id.***, ¶126 & n.3 (Crooks, J., concurring in part and dissenting in part, and writing for a majority on the issue of what constitutes a proper exercise of discretion). "An example of such balancing would be a record that showed that the circuit court considered 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 such as '[t]he inmate's conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs.'" ***Id.***, ¶126 (quoting WIS. STAT. § 973.195(1r)(b)1.). After considering the relevant factors, the court may deny the petition if it concludes that sentence adjustment is not in the public interest. *See* § 973.195(1r)(f).

Hibbler argues that the circuit court erroneously exercised its discretion because the record does not clearly demonstrate that the court considered the relevant factors. We disagree.

Although the circuit court denied Hibbler's petition using a standard court form, the form clearly states that the court considered the relevant factors and concluded that sentence adjustment was not in the public interest. Also, the court added language to the standard form, stating that the district attorney's objection to sentence adjustment was an additional basis to deny Hibbler's petition. The circuit court may, but is not required to, deny a petition for sentence adjustment based on the district attorney's objection. *See* ***Stenklyft***, 281 Wis. 2d 484, ¶82 (Abrahamson, C.J., concurring in part and dissenting in part, and writing for the majority on the issue of the circuit court's discretion).

According to Hibbler, there were no grounds for the circuit court to deny sentence adjustment because Hibbler had received no new charges, had committed only one violation of his supervision rules, had engaged in positive conduct since being reincarcerated, and had completed a treatment program. However, these are only some of the relevant factors that the circuit court considered. Hibbler's focus on these factors to the exclusion of others does not demonstrate that the circuit court erroneously exercised its discretion.

Finally, Hibbler argues that the circuit court was required to consider the original sentencing transcript, and that nothing in the record shows that the court considered the transcript. As support for this argument, Hibbler cites ***State v. Brown***, 2006 WI 131, 298 Wis. 2d 37, 725 N.W.2d 262. In ***Brown***, our supreme court stated that "[t]he original sentencing transcript is an important source of information on the defendant that discusses many of the factors that circuit courts should consider when making a *reconfinement* decision." *See* ***id.***, ¶38 (emphasis added). Here, in contrast, the question is sentence adjustment, not reconfinement. Furthermore, the supreme court has clarified that, even in the reconfinement context, ***Brown*** did not create a rigid rule requiring consideration of the original sentencing transcript. *See* ***State v.***

Walker, 2008 WI 34, ¶¶23-24, 308 Wis. 2d 666, 747 N.W.2d 673. For these reasons, we are not persuaded by Hibbler's argument that the circuit court was required to consider the original sentencing transcript.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals