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DISTRICT II

December 15, 2021

To:

Hon. Sandra Jo Giernoth
Circuit Court Judge
Electronic Notice

Theresa Russell
Clerk of Circuit Court
Washington County
Electronic Notice

Mark Bensen
Electronic Notice

Sarah Burgundy
Electronic Notice

Peter M. Josephson, #158904
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2020AP1815-CR

State of Wisconsin v. Peter M. Josephson (L.C. #2007CF120)

Before Gundrum, P.J., Reilly 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).

Peter M. Josephson, pro se, appeals an order denying his postconviction motion seeking to correct his judgment of conviction by omitting two parenthetical references to “fewer than 3 Violations of 1st Degree Sexual Assault.” Those parenthetical references were appended to the judgment’s identification of the two crimes of conviction, which were repeated sexual assault of the same child. 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.

Following a jury trial, Josephson was convicted in 2007 of two counts of repeated sexual assault of the same child, with the offenses having occurred between 2004 and 2006. *See* WIS. STAT. § 948.025(1)(b). Under § 948.025(1), a defendant could be convicted of repeated sexual assault of the same child if he or she committed three or more acts of first- or second-degree sexual assault of the same child within a specified period of time. *See also* WIS. STAT. § 948.02(1) and (2). In Josephson’s case, all of the predicate § 948.02 offenses were second-degree offenses under subsec. (2) because of the victim’s age at the relevant times. As a result, Josephson was guilty of two Class C felonies because—using the terminology of § 948.025(1)(b)—“fewer than 3 of the violations were violations of [§ 948.02(1)].” He was ordered to serve concurrent sentences of fifteen years’ initial confinement and fifteen years’ extended supervision.

Josephson filed a postconviction motion in which he asserted that, although the judgment of conviction properly identified his crimes as violations of WIS. STAT. § 948.025(1)(b), his judgment improperly described those offenses. Specifically, Josephson argued that the descriptions correctly identified the offenses as “Repeated Sexual Assault of Same Child,” but also included the improper parenthetical characterizations “(fewer than 3 Violations of 1st Degree Sexual Assault).” Josephson requested that the circuit court substitute “1st degree sexual assault” with “2nd degree sexual assault” in the parentheticals. The circuit court denied the

¹ Given the offense dates pertaining to Josephson’s convictions, all references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

motion, concluding the judgment correctly described the offenses for which Josephson was convicted.

On appeal, Josephson renews his postconviction motion arguments, additionally claiming that the judgment of conviction as written prejudicially leads a reader to incorrectly assume that Josephson was convicted of first-degree sexual assault rather than repeated sexual assault of the same child. A circuit court has the authority to correct formal or clerical errors in a judgment of conviction at any time. *See State v. Prihoda*, 2000 WI 123, ¶17 & n.9, 239 Wis. 2d 244, 618 N.W.2d 857. But first, there must be some error to correct. Josephson was convicted of two violations of WIS. STAT. § 948.025(1)(b), which, as explained above, by definition involve fewer than three violations of WIS. STAT. § 948.02(1). Because of the victim's age, Josephson's number of § 948.02(1) violations was, in fact, zero; his crimes were all of the subsec. (2) variety (i.e., second-degree sexual assault of a child).

As such, the judgment of conviction correctly describes his convictions as being for "Repeated Sexual Assault of the Same Child (fewer than 3 Violations of 1st Degree Sexual Assault)." The parenthetical information serves to differentiate Josephson's crimes from the other modes of commission specified in WIS. STAT. § 948.025. *Compare* subsec. (1)(b) with subsecs. (1)(ag) and (1)(ar). Replacing the first-degree sexual assault references with second-degree sexual assault references as Josephson proposes would be inaccurate, because Josephson *did not* commit fewer than three violations of WIS. STAT. § 948.02(2). The judgment accurately reflects the crimes of conviction.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2019-20).

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

Sheila T. Reiff
Clerk of Court of Appeals